

CALLING THE CAVALRY: DISASTER RELIEF AND THE AMERICAN
MILITARY

BY

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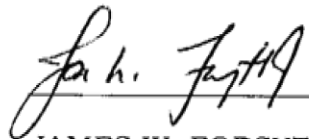
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APPROVAL

The undersigned certify that this thesis meets master's -level standards of research, argumentation, and expression.

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DISCLAIMER

The conclusions and opinions expressed in this document are those of the author. They do not reflect the official position of the US Government, Department of Defense, the United States Air Force, or Air University.



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ABSTRACT

This study analyzes the adequacy of the Department of Defense's (DOD) response during natural disasters. The author assesses the historical evolution of DOD operations domestically to establish expectations Americans have during disaster relief efforts. The author concludes that DOD operates domestically as legislated by Congress, but its response at times falls short of American expectations. To determine why there is a difference between federal laws and American expectations, the writer examines the disasters of Hurricane Andrew and Katrina. The results of this analysis suggest that elites are in a constant struggle for power and control, which sometimes prevents them from making proper decisions during catastrophic events. By providing the historical evolution of federal disaster relief and coupling this with elites desire for power, the author illustrates why the United States must improve existing federal disaster laws. In the final section, the thesis concludes with recommendations on how to improve federal disaster laws, with a focus on increased DOD involvement and improved manning for the Federal Emergency Management Agency (FEMA).



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Introduction

Any purposeful human activity implies commitment to a particular ranking of values.

--Peter Checkland

After Hurricane Katrina, there were many critics of the government's response.¹ The U.S. House of Representatives investigated the federal government's response to Katrina in 2006 and concluded that the National Guard and federal troops did not communicate effectively with one another. They further stated that active-duty forces were unprepared to respond and that the "*National Response Plan Catastrophic Incident Annex* would have delayed the active-duty military response, even if it had been implemented."² "The Catastrophic Incident Annex to the National Response Plan (NRP-CIA) establishes the context and overarching strategy for implementing and coordinating an accelerated, proactive national response to a catastrophic incident."³ For these critics and others like them, the federal government's response to Hurricane Katrina was inadequate. However, this inadequacy is not limited to natural disasters. The 9/11 Commission Final Report cited poor communication and the lack of interaction between state and federal organizations as reasons why the attacks were able to proceed.⁴ Critics vary as to the government's response during national emergencies, but all seem to suggest that the problem is poor communication and little interaction between state and

¹ The following are some authors who have blamed the U.S. Government's response in one way or another. Michael Eric Dyson, *Come Hell or High Water : Hurricane Katrina and the Color of Disaster* (New York: Basic Civitas, 2006). Ivor van Heerden, Mike Bryan, *The Storm: What Went Wrong and Why During Hurricane Katrina—The Inside Story from One Louisiana Scientist* (New York: Penguin Group, 2006). Douglas Brinkley, *The Great Deluge : Hurricane Katrina, New Orleans, and the Mississippi Gulf Coast*, 1st ed. (New York: Morrow, 2006). Cynthia Tucker, "Poor Didn't Deserve This: Neglected by the Nation, They Had No Options," *Atlanta Journal-Constitution*, Wednesday, September 7 2005. Ben Wisner, "Will Katrina Bring Winds of Change?," *Reuters Alertnet* (2005), <http://www.alertnet.org/thefacts/reliefresources/112619216015/htm>, (Accessed 21 Jan 2011). John Brown Childs, *Hurricane Katrina : Response and Responsibilities*, 2nd ed. (Santa Cruz, Calif. Berkeley, Calif.: New Pacific Press; North Atlantic Books, 2008).

² U.S. House of Representatives, *A Failure of Initiative: Final Report of Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina*, (Washington D.C.: Government Publishing Office, 2006), 202.

³ United States Department of Homeland Security, *National Response Plan* (Washington DC: Dept. of Homeland Security, 2004), 1.

⁴ National Commission on Terrorist Attacks upon the United States., *The 9/11 Commission Report : Final Report of the National Commission on Terrorist Attacks Upon the United States*, Official Government ed. Thomas H. Kean, and Lee Hamilton (Washington, DC: National Commission on Terrorist Attacks upon the United States : For sale by the Superintendent of Documents, U.S. G.P.O., 2004), 278.

federal organizations. This is a sentiment shared by many Americans, which influenced Congress to create the Department of Homeland Security in an attempt to improve communication and interaction at all levels.⁵ This did not alleviate the problem of poor communication and lack of interaction, however. Critics have not provided solutions to address the most glaring question of how these problems continue to exist. Disaster, as used in this thesis means “a sudden event that disrupts the social structure, and prevents execution of some or all of its essential functions.”⁶ Just how adequate is the Department of Defense’s Military Support to Civil Authorities (MSCA)? Is it possible that after all the disasters in American history, the United States is still unprepared to provide federal assistance? That is the focus of this thesis.

In considering these questions, it is clear that there are many variables that could influence the United States’ response to national emergencies. This thesis focuses on the expectations of American citizens. Specifically, it examines the adequacy of the Department of Defense (DOD) during times of national emergency. This thesis argues that DOD’s support to civil authorities is adequate since it operates as intended by the American people. This is not meant to suggest that DOD can do nothing to improve how it responds to disasters, but it does suggest that, in the end, society gets the kinds of relief it deserves. DOD responds when directed by civil authority to do so, but the issue is not the response. Rather, the issue is: public perception and how it has, at times, been voiced as discontent. This discontent is due to a lack of understanding about DOD’s role. Many do not understand or refuse to accept the fact that it is not DOD’s decision to provide disaster relief. That decision rests with the states, but the President and Congress can also decide to use federal troops. While the decision to use federal troops may appear easy in theory, it is very difficult in practice.

Americans have a fear of federal troops operating domestically. Fear makes it difficult for local and state officials to recognize when to request federal support and makes federal officials hesitant to assign DOD the lead role in domestic relief efforts.

⁵ Department of Homeland Security, *One Team, One Mission, Securing Our Homeland: U.S. Department of Homeland Security Strategic Plan Fiscal Years 2008-2013* (Washington D.C.: GPO, 2008), 2.

⁶ Gaines M. Foster, *The Demands of Humanity: Army Medical Disaster Relief* (Washington, D.C.: Center of Military History, For Sale by the Superintendent of Documents, U.S. G.P.O., 1983), 4.

Federal troops symbolize a state's inability to manage a crisis and the federal government's willingness to intervene in state affairs. That is, federal troops represent state failure. States prefer support, not rescue, but laws have placed federal troops in the position of providing rescue services. When a national emergency is declared, states are obliged to tell the federal government what internal services have been provided and what federal support is needed. This exchange is written into law and implies that a national emergency is an indication that a state is unable to manage a crisis alone, but in requesting federal support, states rarely request federal troop support because doing so reduces power and control. The Department of Defense works for the President and continues to do so during national disasters. Therefore, a request for federal troops is a request to share power and control with the President. The relationship is somewhat different for the Federal Emergency Management Agency (FEMA). Unlike DOD, FEMA cannot threaten a state's power and control. FEMA has a limited manpower pool and any direct disaster relief support by FEMA is done through contracting. Due to the unique niche that DOD represents in disaster relief operations, local and state officials would rather rely on internal resources than request federal troop support.

The President and Congress have the power to intervene in state affairs without the approval of the state; however, this authority comes with a risk. The power of the President to intervene in state affairs is not stated explicitly in the Constitution.⁷ But most Presidents believe they have the power to intervene in state affairs to protect the constitutional rights of citizens, and this belief has been supported by the Supreme Court and Congress. While the President has the support of Congress and the Supreme Court, this support is unreliable. Presidents can intervene to stop general domestic violence, but nothing else is specifically written into law. For this reason, Presidents have usually chosen to wait for a state request or until the suffering of victims reaches a level where everyone agrees that federal intervention is necessary. The threshold is dependent upon the administration and the disaster. Congress could pass a law requiring federal troop intervention but this would be unusual since troop movement has traditionally been

⁷ According to Krent, "Understanding presidential powers from a constitutional perspective is difficult. There is no readily definable list of attributes or authorities. Article II itself is vague, never defining the 'executive' power with specificity." Harold J. Krent, *Presidential Powers* (New York: New York University Press, 2005), 1.

within the purview of the commander-in-chief. Since the federal government employs a checks-and-balance system that prevents any single branch of government from establishing a monopoly of power and control, it forces compromise, agreements, and prevents unilateral action. These agreements are either written into law or are merely customary, but violation comes at a political cost. Carnes Lord said it best when discussing leadership in contemporary democracies, “Because its fundamental law is laid down in a written document, opportunities for even the greatest statesmen to effect major change are severely restricted.”⁸

Disaster relief, as we know it today, reflects decisions made a long time ago that cast a long shadow. The American culture that was shaped and molded during the early years of the republic affects decisions about disaster relief today. These American expectations are used in this thesis to analyze two case studies: Hurricanes Andrew and Katrina. The Lessig model is used to analyze American history and to determine the American expectation of disaster relief efforts. Lessig essentially says that norms, market, architecture, and laws regulate and influence each other and the state. However, all actions start with norms. Norms define the market, how we utilize architecture and most importantly what laws are created, altered and overturned. In short, the federal government operates in accordance with the U.S. Constitution and federal laws. The two case studies illustrate that the laws for disaster relief are written loosely enough to prevent any one entity from being responsible for the entire relief operations. Because of this, communication and coordination issues are inherent in the disaster relief process.

Chapter One provides the methodology for this thesis and explains the theories used to clarify a theory of fear. Chapter Two frames the analysis. In order to establish the American expectation of disaster relief, an historical analysis is accomplished. The analysis covers the 1802 Fire at Portsmouth, the Whiskey Rebellion, the conspiracy of Aaron Burr, a doctrine established by Attorney General Caleb Cushing and the Posse Comitatus Act. In exploring these events, other historically significant events are covered to properly assess the evolution of American expectations, but the analysis

⁸ Carnes Lord, *The Modern Prince: What Leaders Need to Know Now* (New Haven: Yale University Press, 2003), 1.

revolves around the events stated above. Chapter Three is a case study of Hurricane Andrew in which the President chose DOD as the lead federal agency in the disaster relief effort. This case illustrates the poor communication between local, state, and federal agencies and makes an argument for why DOD should have a more prominent role in relief operations. Chapter Four examines Hurricane Katrina and highlights how the effects of a storm can be made worse when local, state and federal authorities are unprepared to manage a crisis. Chapter Five wraps up the argument and research.



Chapter 1

The Analytical Frame

If you would understand anything, observe its beginning and its development.

Aristotle

The research problem under consideration here revolves around disaster relief responses. Popular wisdom seems to suggest that DOD's domestic disaster response is inadequate. DOD is often painted as being slow and ineffective.¹ A small segment of society even seems to believe that the federal government is needlessly hesitant to use the immense resources of DOD for domestic disaster operations.² The official term for DOD's domestic disaster relief is known as Military Support to Civil Authorities (MSCA) and is defined as "support, including Federal military forces, the Department's career civilian

¹ The following are some authors who have blamed the U.S. Government's response in one way or another. Michael Eric Dyson, *Come Hell or High Water : Hurricane Katrina and the Color of Disaster* (New York: Basic Civitas, 2006). Ivor van Heerden, Mike Bryan, *The Storm: What Went Wrong and Why During Hurricane Katrina—The Inside Story from One Louisiana Scientist* (New York: Penguin Group, 2006). Douglas Brinkley, *The Great Deluge : Hurricane Katrina, New Orleans, and the Mississippi Gulf Coast*, 1st ed. (New York: Morrow, 2006). Cynthia Tucker, "Poor Didn't Deserve This: Neglected by the Nation, They Had No Options," *Atlanta Journal-Constitution*, Wednesday, September 7 2005. Ben Wisner, "Will Katrina Bring Winds of Change?," *Reuters Alertnet* (2005), <http://www.alertnet.org/thefacts/reliefresources/112619216015/htm>, (Accessed 21 Jan 2011). John Brown Childs, *Hurricane Katrina : Response and Responsibilities*, 2nd ed. (Santa Cruz, Calif. Berkeley, Calif.: New Pacific Press; North Atlantic Books, 2008).

² "Sen. John Warner publicly wondered if Congress should reconsider the Posse Comitatus Act of 1878 and give the president and secretary of defense "correct standby authorities" to oversee disaster response." Austin Bay, "Military and Natural Disasters," StrategyPage.com, http://www.strategypage.com/on_point/2005928.aspx (Accessed 21 May 2011). Warner adapted the Authorizations Act of 2006 to include greater latitude for the President and SECDEF in natural disasters. United States Congress, "National Defense Authorizations Act of 2006," ed. U.S. Congress (Washington D.C.: Government Printing Office, 2006). For an opposing point of view, McEntire, Citing DOD's martial law role, suggest that Americans fear a loss of governmental control over DOD, if DOD took a more prominent role in disasters; David A. McEntire, *Disaster Response and Recovery : Strategies and Tactics for Resilience* (Hoboken, NJ: Wiley, 2007). 76. LTC David R. Brown, Army National Guard, provides many reasons why DOD should not take a more proactive role in disaster relief. Most intriguing is his suggestion that the National Guard can handle this mission without increased DOD involvement. Lieutenant Colonel (Army National Guard) David R. Brown, "Relevance of National Guard Units in the Preparation and Response to Natural Disasters," United States Army War College, <http://www.strategicstudiesinstitute.army.mil/pdffiles/ksil285.pdf>, (Accessed 21 May 2011).

and contractor personnel, and DOD agency and component assets, for domestic emergencies and for designated law enforcement and other activities.”³

The research is guided primarily by two concerns. First there is the idea ‘out there’ that MSCA works as intended. This is informed by the work of Peter Feaver. Feaver contends that that even when civilian leaders lack the requisite knowledge to direct military action, they are still in charge.⁴ This, of course, stems from the Constitution. Since civilians are constitutionally in charge of the military, they govern how federal troops are utilized. While laws evolve over time, DOD is to remain subservient to the will of the people. In this sense, “society’s intent” does not mean that MSCA is sufficient to meet every American expectation of federal disaster relief. It means only that DOD is executing its MSCA role in accordance with federal laws.

The second concern guiding this research has to do with fear or more specifically the fear of failure. For local and state officials, failure to properly manage a crisis can negatively impact reelection opportunities or otherwise lead to a loss in power and control. While failure can occur in many forms, federal troops are the visible expression of a state’s inability to properly manage a crisis. This is due to the fact that states have the autonomy to act unilaterally in disaster relief efforts. Federal laws require states to explicitly request federal support prior to federal intervention but there is an exception to this rule. When a state lacks the capability to manage a crisis, the federal government can intervene without a state’s request; however, a state’s inability to properly manage a crisis must be visible and irrefutable. That is, poor disaster-relief policies, strategies, and plans are not in and of themselves triggers for federal intervention. The presence of federal troops in relief efforts indicates a state’s inability to manage a crisis, or said differently, their failure to preserve the rights and freedoms guaranteed by the Constitution.

³ U.S. Department of Defense, "Strategy for Homeland Defense and Civil Support," <http://www.defenselink.mil/news/Jun2005/d20050630homeland.pdf>, (Accessed 3 May 2011).

⁴ Peter Feaver, *Armed Servants : Agency, Oversight, and Civil-Military Relations* (Cambridge, Mass.: Harvard University Press, 2003), 9.

The Lessig Model

The Lessig model highlights the importance of norms, markets, and architecture, as they pertain to how the federal government can influence human and market behavior. Norms, market, and architecture are subject to law, albeit imperfectly, incompletely and often in obscure ways. Moreover, by constraining some behavior, these regulators influence others. This model is the framework I use to determine expectations of federal disaster relief efforts. It is hypothesized that over time the norms, laws, market, and architecture regulate behavior in a manner where social interaction becomes expected, predictable, and eventually codified. After the American Revolution, for example, the masses maintained a revolutionary ideology that was embodied by the social organizations and governments they formed.⁵ This ideology was not conducive to building a nation-state and had to be resolved through compromise and cooperation with the American elites. The Lessig Model is used to understand the forces that created America as a social organization, in order to better understand the American expectation of federal disaster relief efforts. The Lessig model, as adapted for this thesis, is illustrated in Figure 1.

For Lessig, the law is essentially an ultimatum, an order that is backed up by a threat: do this, or else. Laws are not written and passed haphazardly; they express the values and beliefs of a society.⁶ Norms are accepted constraints that members of society impose on each other. Norms are similar to laws in that punishment occurs after a violation. Moreover, like laws, punishment (in all forms) serves to influence other members of the society to conduct themselves in a socially acceptable manner.⁷ The difference is that laws are enforced through state mechanisms and norms are enforced by society. Laws change because new experiences violate existing norms or norms evolve over time requiring a change in the law. 9/11 is an example of experiences that violated existing norms, i.e. freedom from fear. Examples of changing norms requiring a

⁵ Concept taken from George Connor; George E. Connor, "The Politics of Insurrection: A Comparative Analysis of the Shays', Whiskey, and Fries' Rebellions," *Social Science Journal* 29, no. 3 (1992), 15.

⁶ Lawrence Lessig, *Code and Other Laws of Cyberspace* (New York: Basic Books, 1999), 94.

⁷ This is an adaptation of the Lessig "New Chicago School" model. Lessig breaks down the punisher into those observing the constraints (objective perspective) and those experiencing the constraints (subject perspective). Here, it is included as one.

subsequent change in laws are women's suffrage, working age of children, and age of adulthood.

The market constrains behavior through price manipulation. Price is a market delineator, where a resource transfers from one entity to another and the obligation is incurred the moment the benefit is received, regardless of when payment is made. Market transactions are translated into law and supported by norms. Without laws and norms, the market could not exist. Norms not only compel compliance but they also have the power to change attitudes toward a given requirement over time. Norms are more than social regulatory requirements. They are the socially *accepted* standards of behavior for a society.

Architecture is defined by Lessig as the “the way the world is, or the ways specific aspects of it are.”⁸ Architecture can be manmade or naturally occurring but it is to be considered as a single class of constraints, whether it is manmade or not.

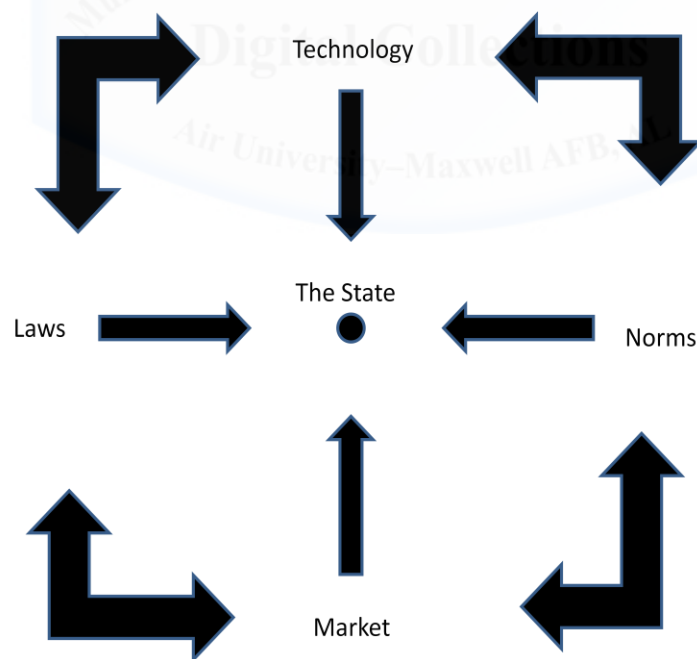


Figure 1: Adaptation of Lessig “New Chicago School” model

Architecture is important because it has the ability to self-regulate. Laws, norms and the market are constraints that are checked by judgment, but architecture has an effect until

⁸ Lessig, *Code and Other Laws of Cyberspace*, 236.

someone steps in to alter it. Manmade architecture must be maintained, but the point here is that architecture is not subject to the whims of human judgment and can be expected to operate as designed. For MSCA, technology (trains, airplanes, trucks, etc.) has created the expectation of American citizens under duress to anticipate *prompt* relief by the federal government. Simply because they were created to transport people and things quickly and efficiently, the American public views these technologies as anticipatory tools of relief during national emergencies.

Norms, laws, markets and architecture are visible expressions of culture, and express the characteristics and beliefs of a particular nation-state.⁹ For example, the culture after the American Revolution consisted of a revolutionary ideology of the masses and a state-building ideology of the elite. This is the natural state of affairs for people who have fought for their independence. After a revolution, society begins setting up social organizations that reflect a revolutionary ideology, but ultimately these organizations limit the role and size of government. Said differently, the grievances that united the people and caused a revolt do not disappear after victory, but must be resolved over time through the interaction of the people and the new government. Following a revolution, the characteristics and beliefs of a nation develop and evolve.¹⁰

While the cases are informed by Feaver and Lessig's work, I do employ the Elite Theory of Policy Analysis to round out my analysis. The Elite Theory of Policy Analysis states that political elites have a monopoly on power, wealth, deference, skill, and most importantly vital information.¹¹ "They wield this influence by virtue of their exceptional access to political information and positions and their consequently highly disproportionate control over public policy making and communication processes which relate society to polity and governors to governed."¹²

The two cases under consideration in the next chapters illustrate that the military is not shirking its duties, to borrow Feaver's term. However, bureaucratic organizations are designed to fulfill a specific purpose and are not structured to handle more than one

⁹ Dictionary.com, "Dictionary.Com," <http://dictionary.reference.com/browse/culture> (Accessed 21 Jan 2011).

¹⁰ _____, "Dictionary.Com."

¹¹ Michael P. Smith, "Elite Theory and Policy Analysis: The Politics of Education in Suburbia," *The Journal of Politics* 36, no. 4 (1974), 1006.

¹² Lewis J. Edinger, and Searing, Donald D., "Social Background in Elite Analysis: A Methodological Inquiry," *The American Political Science Review* 61, no. 2 (1967), 428.

mission very well. There is a natural tendency for bureaucratic organizations to focus on what is emphasized by leadership, thus becoming narrowly focused on problems that are most familiar to them. For DOD, this is war, defined as the violent struggle between nation-states to achieve a political objective. DOD plans and equips to fight wars and is therefore hesitant to take on Military Operations Other Than War (MOOTW). Further, national emergencies do not occur very frequently. This leads to a lack of organizational memory because military personnel separate or retire from the military in between domestic disasters. Bureaucratic organizations by nature are self-contained, leading to an inability to communicate effectively outside of the organization. All of this leads to the perception of domestic military action being inadequate; when in fact, DOD operates as society intends.

Conclusion

It is hypothesized that the American people have a fear that is triggered by the presence of federal troops operating domestically. This fear makes it difficult for local and state officials to recognize when federal troop support is necessary. Federal troops are the public indication that a state is incapable of managing a crisis. Failure carries consequences that can severely limit future employment and decrease power, control and prestige. State leaders naturally prefer to delay federal troop support as long as possible, relying on internal state capabilities to achieve success. The following attempts to show why this is the case.

Chapter 2

The Historical Frame

As the first of everything, our situation will serve to establish a precedent, it is devoutly wished on my part, that these precedents may be fixed on true principles.

President George Washington

James Kirby Martin suggested that the American Revolution was not a story of a unified people, ideologically joined in a struggle for a better future, but rather a story of citizens and leaders struggling to resolve issues that seemed countervailing and intractable.¹ America was essentially formed through agreements necessary to reconcile differing beliefs, norms, and behaviors. These agreements eventually created the American culture, a uniquely American way of doing things. The goal of this chapter is to illustrate how the evolution of the American culture created a set of expectation regarding disaster relief operations.

The relationship between American culture and disaster relief is real and powerful. To illustrate why this is so, I draw on the work of Lawrence Lessig. The Lessig model is used to analyze the attitudes and beliefs of the American public and illustrate a connection between social organizations and institutions. Social organizations influence governments to negotiate and reconcile differences. Differences are not resolved until both sides agree, consciously or not, to acquiesce to some degree. This process can take a considerable amount of time, but in the end, the result is the creation of a set of norms that influence the market, the law, architecture and society. Norms, laws, market, and architecture all regulate individual and state behavior; however, they regulate in different ways and in varying combinations. This unpredictability causes cultural biases and expectations regarding federal disaster relief efforts that may be unknown to those who possess them. However, these biases and expectations are identifiable and predetermine what is acceptable and unacceptable in federal disaster relief efforts. This analysis of American history includes the interaction of norms,

¹ James Kirby Martin and Merrill Jensen, *The Human Dimensions of Nation Making: Essays on Colonial and Revolutionary America* (Madison: State Historical Society of Wisconsin, 1976), 10.

market, law, and architecture, that manifest themselves by influencing Reconstruction and civil liberties, federal power, and the use of federal troops in domestic affairs. These manifestations are examples of the tension that is ever present between the masses and elites, which constantly requires reconciliation of some form. Historically, this reconciliation becomes the culture of America, defining the American way of managing disaster relief operations.

The 1802 Fire at Portsmouth

Less than thirty years after the United States declared and won its independence, Congress passed what is considered the first disaster relief act in American history.² This act established the precedent for the federal government assisting states in resolving events that were beyond their ability to mitigate. Further, the Portsmouth fire of 1802 highlighted a predilection for disaster relief over the prevention of national disasters. Portsmouth would have fires in 1806 and 1813 before rebuilding the town with wider streets and brick buildings.³ Cities would continue to be ill-prepared for natural disasters—the Galveston Hurricane of 1900, the San Francisco earthquake of 1906, and even Hurricane Katrina in 2005. These examples illustrate that while states want to operate independent of the federal government, they also want the federal government to rescue them from poor planning. To be clear, the Congressional Act of 1803 did not directly provide financial assistance to the citizens of Portsmouth; it only suspended the payment of bonds for a period of one year.⁴ However, prior to this act, the federal government did *not* accept responsibility for helping states financially through disasters.⁵ This act was a legal expression that regulated human behavior, but also signaled a change in the norms of the country.

Like many civilizations during the 1700s, Americans attributed natural disasters to God or some other supernatural manifestations. As time went on, scientists figured out

² U.S. Government, "Federal Emergency Management Agency," U.S. Department of Homeland Security, <http://www.fema.gov/about/history.shtm>. (Accessed 17 Feb 2011). To see Act; United States Congress, "Relief of the Sufferers by Fire, in the Town of Portsmouth," Duane & Son, Printers, <http://memory.loc.gov/cgi-bin/ampage?collId=llhb&fileName=021/llhb021.db&recNum=41>, (Accessed 9 March 2011).

³ Steven E. Achilles, *Portsmouth Firefighting* (Charleston, SC: Arcadia Pub., 2009), 7.

⁴ Congress, "Relief of the Sufferers." (Accessed 17 Feb 2011).

⁵ Gaines M. Foster, *The Demands of Humanity: Army Medical Disaster Relief* (Washington, D.C.: Center of Military History For sale by the Superintendent of Documents, U.S. G.P.O., 1983), 4.

that natural disasters were indeed natural, and this realization eventually led to the creation of disaster-relief plans by civil authorities. However, at that time, the federal government was not equipped to provide disaster relief to states, because the federal government:

1. "Was extremely small."
2. "Had manpower concentrated in the capital."
3. "Lacked the means to send relief."⁶

These three things are in part the byproduct of market forces. It obviously takes more money to have a large, dispersed government with means available to provide disaster relief. However, the market as well as laws stem from beliefs or norms and do not appear without reasons grounded in the expectation of the masses, elites, or both. In the 19th century, American citizens individually felt what Denis Brogan describes as rational courage, superiority in logistics, and tenacity in numbers.⁷ They considered all forms of federal disaster relief a task best left to the individual, and if this failed, responsibility fell to local or state government. This feeling is reflected in the U.S. Constitution, which does not explicitly grant power to the federal government to provide disaster assistance to states. The absence of this constitutional authority was heavily influential in dissuading Congress from supporting federal disaster relief efforts. As a congressman told his peers in 1847, "The Government had not interfered to relieve the distress of its own people, when suffering from the consequences of destructive fires...and they had done rightly in not interfering, because it was a dangerous exercise of power...They [Congress] had better leave the business of dispensing alms to the liberality and generosity and better judgment of their constituents."⁸ However, this influence was waning and while it would take decades for change to produce the disaster-relief system we know today, it all began with the 1802 Portsmouth fire.

⁶ Foster, *The Demands of Humanity : Army Medical Disaster Relief*, 7.

⁷ Quoted by Gray; Colin S. Gray, *Explorations in Strategy*, Contributions in Military Studies, (Westport, Conn.: Greenwood Press, 1996), 88.

⁸ United States Congress, 29th Congress, 2d Session (1 Mar, 1847), "Debates and Proceedings, 1833-1873", Blair & Rives, <http://memory.loc.gov/ammem/amlaw/lwcglink.html#anchor29> (Accessed 14 March 2011), 513.

The 1802 Portsmouth fire began to change that mentality even though Congress as a whole did not change until the 1970s. The fire was so devastating that Congress began transitioning toward a willingness to provide disaster relief and adjusting to the norms of the time, but this was a transition. For the foreseeable future, Congress would act in a manner that was consistent with the Constitution and precedents set by tradition, i.e. a reluctance to provide federal disaster support.⁹ After the 1802 Portsmouth fire, there was still considerable resistance in Congress, which seemed to take action only when federal disaster-relief efforts coincided with national interest and public pressure. In fact, Congress was more willing to provide federal assistance to the Indians and foreign countries than it was domestically, a result of market forces. It was easier for Congress to see the benefit of supporting a country connected economically to American markets and Indians who were acting as insurgents.¹⁰ However, as a result of this type of disaster support, opportunities emerged for American citizens to pressure Congress for domestic disaster relief at home. American citizens were able to cite incidents such as the Portsmouth fires as legal precedent to change the official congressional position, but this process took time. It was not until after the Civil War that the mentality of Congress changed enough to accept the notion that disaster relief was ultimately the responsibility of the federal government. So, what changed after the Civil War? The credit seems to belong to President Andrew Johnson and the Freedmen's Bureau.

The Freedmen's Bureau was a government agency created by a bill in 1865 and is officially known as the Bureau of Refugees, Freedmen, and abandoned Lands. President Abraham Lincoln signed the Freedmen's Bureau Bill into law on 3 March 1865, a little over a month before his assassination.¹¹ The Bill was a product of Reconstruction, and was intended to last one year, providing welfare services to former slaves to reduce the economic impact of their introduction into society. This congressional law was a response to market forces, but it had a fortuitous byproduct of influencing disaster relief legislation. Reconstruction caused America to begin working

⁹ Foster, *The Demands of Humanity : Army Medical Disaster Relief*, 8.

¹⁰ ———, *The Demands of Humanity : Army Medical Disaster Relief*, 11.

¹¹ Linda F. Williams, *The Constraint of Race : Legacies of White Skin Privilege in America* (University Park: Pennsylvania State University Press, 2003), 35.

through race inequities, slowly figuring out how to assimilate different races, but not all Americans shared the desire for equality among races. By creating the Freedmen's Bureau, Congress inadvertently provided disaster victims the leverage to force the federal government to improve disaster relief efforts. Congress could not ease the suffering of African-Americans without providing disaster relief to all suffering citizens, but this realization did not occur overnight. There was much resistance to the creation of the Freedmen's Bureau, but the point here is once Congress acted to financially support African-Americans, it painted itself into a corner. It became increasingly difficult for congressmen to insist on disaster relief remaining a self-help system. Johnson vetoed the 1866 legislation extending the Freedmen's Bureau, but this act was unable to remove the precedent that had been set.¹² The Freedmen Bill was an act done in response to market forces to provide recently freed slaves the opportunity to become self-sufficient through the building of educational institutions, houses and jobs. With the benefit of hindsight, there is no doubt that this path was better than any type of welfare alternative. However, this act had the unintended consequences of accelerating the evolution of federal disaster relief by making it difficult for Congress to resist efforts to increase the government's role during disasters. The Freeman's Bill is an example of a market response, supporting changing norms that accelerated changes in federal laws.

The Whiskey Rebellion

It is important to stress that the Shays', Fries', and Whiskey Rebellion were theoretically connected and that this connection had implications for the American political structure.¹³ For brevity, the thesis focuses on the Whiskey Rebellion where President George Washington encountered what all of his successors would; the tension between individual rights and the governing power of the local, state, and federal governments. The eminent historian Russell F. Weigley perhaps framed the tension best

¹² Hans L. Trefousse, *Impeachment of a President: Andrew Johnson, the Blacks, and Reconstruction* (New York: Fordham University Press, 1999), 14. To read about the Johnson presidency which excludes his inflammatory remarks made as a congressman, see; Glenna R. Schroeder-Lein and Richard Zuczek, *Andrew Johnson: A Biographical Companion* (Santa Barbara, Calif.: ABC-CLIO, 2001).

¹³ George E. Connor, "The Politics of Insurrection: A Comparative Analysis of the Shays', Whiskey, and Fries' Rebellions," *Social Science Journal* 29, no. 3 (1992), 1.

when he stated that historians have “bestowed considerable sympathy upon the whiskey rebels,” partially due to the belief “that military enforcement of civil law is distasteful and dangerous.”¹⁴ Weigley goes on to argue that “if the use of the military arm to enforce civil law is distasteful and dangerous, it is nevertheless preferable to lawlessness and anarchy.”¹⁵ While this is undisputable, the choice is not between military law enforcement and anarchy. The very nature of what it means to be governed, rules out anarchy as an acceptable option. The choice is more difficult than the bilateral options offered by Weigley. Presidents must figure out how to govern in a manner that is acceptable to the masses and the American elites. For Washington, the concern was the continuance of the eight-year constitution, geographical sectionalism, factionalism, and foreign interference that could rip apart the United States. He stated in his farewell address, “all parts of the union must find in the united mass of means and efforts greater strength, resources and proportionally greater security from external danger.”¹⁶ Because of his concern for the continuance of the Union, Washington felt that the United States needed to “avoid the necessity of those overgrown military establishments, which under any form of government are inauspicious to liberty, and which are to be regarded as particularly hostile to republican liberty.”¹⁷

The Whiskey Rebellion started in 1794 but the events that precipitated the Whiskey Rebellion started in 1791, with the passing of Hamilton’s Whiskey Excise Tax. The Whiskey Tax was most difficult on the citizens of Western Pennsylvania, where whiskey was a commodity and a currency due to the ease of transporting distilled liquors instead of bulky sacks of grain.¹⁸ The frontiersmen had to barter their produce but were required to pay their taxes in cash, which was scarce in the West during this time. The

¹⁴ Russell Frank Weigley, *History of the United States Army*, Enl. ed. (Bloomington: Indiana University Press, 1984), 101.

¹⁵ Weigley, *History of the United States Army*, 101.

¹⁶ Yale Law School, "George Washington's Farewell Address 1796," Lillian Goldman Law Library, http://avalon.law.yale.edu/18th_century/washing.asp. (Accessed 17 Feb 2011).

¹⁷ Yale Law School, "Washington's Farewell Address."

¹⁸ Robert W. Coakley, *The Role of Federal Military Forces in Domestic Disorders, 1789-1878*, Army Historical Series (Washington, D.C.: Center of Military History Supt. of Docs., U.S. G.P.O. [distributor], 1989), 28-30. To see explanation of the burden of the whiskey tax; Thomas P. Slaughter, *The Whiskey Rebellion : Frontier Epilogue to the American Revolution* (New York: Oxford University Press, 1986), 73. To see the hatred behind the tax see; Leland Dewitt Baldwin and Western Pennsylvania Historical Survey., *Whiskey Rebels : The Story of a Frontier Uprising* ([Pittsburgh]: University of Pittsburgh Press, 1939), 62.

economic incentives of the market led to violence because the excise tax¹⁹ induced the uneven distribution of wealth, with the taxes seemingly collected on the poor and not the rich.²⁰ Secretary of the Treasury Alexander Hamilton was looking to shore up the federal finances and not tax agricultural interests in an effort to support commercial entities.²¹ The citizens of western Pennsylvania did not understand or refused to believe that the Excise Tax Law was merely an avenue to make the federal budget solvent. Leland Baldwin points out that, "Monongahela²² countryman's attitude toward the excise was [only] partially the result of economic causes."²³ Norms also contributed to an eventual clash between the citizens of Western Pennsylvania and the federal government. Agreeing with Baldwin, Slaughter adds that the mandate to try cases in the federal courts of Philadelphia provided a faulty judicial mechanism to remedy grievances.²⁴ Both reminded the former colonists of tyranny and repression. The former colonists had a collective memory that provided a negative reminder of what taxes meant. This reminder led to violent acts that the fledgling American judicial system was unprepared to handle. For example, the original law of 1791 mandated that specific cases of excise tax violations be tried in federal court. Having to travel from Western Pennsylvania to Philadelphia seemed reminiscent of traveling to England for trial prior to the American Revolution, which the colonists had fought so valiantly to change.²⁵ Further, there was a tradition of opposing excise taxes in western Pennsylvania. The region had taxes on liquors since 1684, with the last of such laws passed in 1780. The 1780 tax law was never enforced, however, due to popular and violent uprisings. Consequently, Pennsylvania passed a law that it would not pay any federal excise tax in 1791.²⁶ Given this history, it is clear that the negative view of the citizens of western Pennsylvania was not only against the excise tax, but also against government enforcement of tax laws.

¹⁹ For the importance of economics see; Charles Tilly, Louise Tilly, and Richard H. Tilly, *The Rebellious Century, 1830-1930* (Cambridge: Harvard University Press, 1975), 254.

²⁰ For a discussion on the effect of income inequality and violence see; Edward N. Mitchell A. Seligson Muller, "Inequality and Insurgency," *The American Political Science Review* 81, no. 2 (1987).

²¹ Coakley, *The Role of Federal Military Forces in Domestic Disorders, 1789-1878*, 29.

²² "Is a river flowing from N West Virginia through SW Pennsylvania into the Ohio River. 128 miles (205 km) long; Dictionary.com, "Dictionary.Com," <http://dictionary.reference.com/browse/culture>.

²³ For why the negative attitudes were from economic causes, see; Baldwin and Western Pennsylvania Historical Survey., *Whiskey Rebels : The Story of a Frontier Uprising*, 25.

²⁴ Slaughter, *The Whiskey Rebellion : Frontier Epilogue to the American Revolution*, 177-179.

²⁵ For impact and justice of excise tax see Baldwin, *Whiskey Rebellion*, 69-70.

²⁶ Coakley, *The Role of Federal Military Forces in Domestic Disorders, 1789-1878*, 30.

President George Washington recognized this and decided that he would not use force unless clearly provoked to prevent any association of his action with tyranny and repression.²⁷ Still, this did not resolve the situation. Due to their beliefs and experiences, the Whiskey Rebels did not intend to pay taxes and had a disdain for any type of governmental mandate.²⁸ Confrontation was inevitable. When the time came to use force, Washington used the militia and not the army. In a letter to Alexander Hamilton, 16 September, 1792, Washington stated that "...not only the Constitution and Laws must strictly govern; but the employing of the regular Troops avoided if it be possible to effect order without their aid; otherwise there would be a cry at once, 'The Cat is let out; we now see, for what purpose an Army was raised.'"²⁹ Washington established the precedent to use the militia, now the National Guard, over the federal troops in domestic matters.

The Military and the Law

During the Whiskey Rebellion, Congress passed legislation that allowed employment of the militia to suppress the rebellion and repel invasion.³⁰ This was the second Militia Act, and it was created to meet the unforeseen threat of insurrection and invasion. The act also included a provision requiring the President to state publicly the intent to use the militia, thereby providing time for the insurgents to disperse.³¹ The 2nd Congress was concerned about the presence of the military operating domestically, but it recognized that the militia caused less public consternation than federal troops. The

²⁷ Richard H. Kohn, "The Washington Administration's Decision to Crush the Whiskey Rebellion," *The Journal of American History* 59, no. 3 (1972), 584.

²⁸ Weigley, *History of the United States Army*, 101.

²⁹ John C. Fitzpatrick, "The Writings of George Washington from the Original Manuscript Sources 1745-1799," University of Virginia Library, <http://etext.virginia.edu/etcbin/toccer-new2?id=WasFi32.xml&images=images/modeng&data=/texts/english/modeng/parsed&tag=public&part=126&division=div1>, (Accessed 8 Feb 2011).

³⁰ 1st Session 2nd Congress, "An Act to Provide for Calling Forth the Militia to Execute the Laws of the Union, Suppress Insurrections and Repel Invasions.," The Library of Congress, <http://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=001/llsl001.db&recNum=387>. 264-265. (Accessed 20 March 2011).

³¹ "Sec. 3. *Provided always, and be it further enacted*, That whenever it may be necessary, in the judgment of the President, to use the military force hereby directed to be called forth, the President shall forthwith, and previous thereto, be proclamation, command such insurgents to disperse, and retire peaceably to their respective abodes, within a limited time."; 2nd Congress, "An Act to Provide for Calling Forth the Militia." This provision has been carried to present day and can be found in 10 U.S.C. 334; Cornell University, "Proclamation to Disperse," Legal Information Institute, http://www.law.cornell.edu/uscode/html/uscode10/uscode10_00000334----000-.html. (Accessed 20 March 2011).

Militia Act of 1792 illustrates that it is necessary at times to adjust federal laws to meet existing threats and was the first congressional act explicitly providing the President with emergency powers. This Act was less prohibitive to a quick and efficient federal response because communication between the President and Congress occurred relatively easily. There would be little time lost between the Presidential proclamation for the insurgents to disperse and the execution of military action. Contrary to this, the conspiracy of Aaron Burr would eventually lead to a law that has resulted in significant delays in federal response.

In general, the Burr Conspiracy was a plan concocted by Aaron Burr and Brigadier General James Wilkinson in 1804 to overthrow the American government.³² More specifically, historians have never agreed upon or defined Burr's intentions, but tend to agree that Wilkinson was paid by the Spanish government while sitting as the commanding general of the U.S. Army in the West.³³ In any case, what is important here is that President Thomas Jefferson was certain of Burr's intentions to overthrow the government and acted accordingly.³⁴ As such, it is Jefferson's action as the President of the United States that is the focus of this analysis. On 8 March, 1807, Jefferson signed congressional legislation authorizing the use of federal troops as well as militia in domestic affairs. In examining his options during the Burr conspiracy, Jefferson became concerned that the presidency did not have the authority or flexibility to use federal troops properly in domestic affairs. Jefferson authored the draft bill to Congress, by sending it through his friend, John Dawson, a representative from Virginia.³⁵ This Bill represented an ideological shift in Jefferson's view of the presidency. Before Jefferson became President, he was a staunch supporter of a self-help system where citizens had the right to make their own decisions with little interference from government. Jefferson

³² It is difficult to ascertain the specific year Burr and Wilkinson first considered their plan, but I think it is fair to go with 1804, when Burr met with Wilkinson. See; Andro Linklater, *An Artist in Treason : The Extraordinary Double Life of General James Wilkinson*, 1st U.S. ed. (New York: Walker, 2009), 215.

³³ Linklater, *An Artist in Treason : The Extraordinary Double Life of General James Wilkinson*, 144.

³⁴ Thomas Jefferson, "Special Message to Congress on the Burr Conspiracy (January 22. 1807)," American State Papers, 9th Congress, 2nd Session, <http://memory.loc.gov/cgi-bin/ampage?collId=llsp&fileName=037/llsp037.db&Page=468>. (Accessed 18 March 2011).

³⁵ Coakley, *The Role of Federal Military Forces in Domestic Disorders, 1789-1878*, 83.

was very critical of Washington's handling of the Whiskey Rebellion and sided with the rebels in their decision to resort to violence.³⁶

As a member of the elite, Jefferson saw things differently. The passage of this law, which allowed the use of federal troops in domestic affairs, was Federalist in nature, i.e. big, strong federal government. However, it was a Republican President; one who should have supported a small, weak federal government, who reversed the philosophy of 1788.³⁷ The law stated "that in all cases of insurrection or obstruction to the laws, either of the United States or of any individual State or Territory, where it is lawful, for the President of the United States to call forth the militia for the purpose of suppressing such Insurrection or of causing the laws to be duly executed, it shall be lawful for him to employ, for the same purposes, such part of the land and naval force of the United States as shall be judged necessary, having first observed all the prerequisites of the law in that respect."³⁸ This law is better known as the Insurrection Act, but illustrates how American society was evolving; reconciling the ideology of the masses and elites. Jefferson felt that he needed more power as President and added a law to ensure he had that power in the future. The trend toward increasing the power of the federal government would continue with the Cushing doctrine.

The Cushing Doctrine was an 1854 interpretation of federal statutes by attorney general Caleb Cushing which allowed U.S. marshals to recruit federal troops as part of a posse comitatus.³⁹ The Attorney General, recognizing the need to police the western frontiers and the lack of state police officers, encouraged the use of federal forces as a

³⁶ Jefferson felt that the federal government caused the Whiskey Rebellion and then responded with excessive force. See Jefferson letter to Madison, 28 Dec 1794; Thomas Jefferson, "Whiskey Rebels and Democratic Societies," University of Virginia Library, <http://etext.virginia.edu/etcbin/toccer-new2?id=JefLett.sgm&images=images/modeng&data=/texts/english/modeng/parsed&tag=public&part=108&division=div1>. (Accessed 7 Feb 2011).

³⁷ It was 8 July, 1788, that the old Congress, under the Articles of Confederation, transfers power to the new government to include the first congressional election and electors of the first President; University of Rhode Island, "History 141 – United States to 1877", <http://www.samuelbrenner.com/URIH141/Timeline/EarlyRepublic.html> (Accessed 20 March 2011).

³⁸ 2nd Session 9th Congress, "Act Authorizing the Employment of the Land and Naval Forces of the United States, in Cases of Insurrection," Congressional Globe, <http://memory.loc.gov/cgi-bin/ampage>. (Accessed 15 March 2011).

³⁹ In 1854, Cushing issued an opinion supporting the use of federal troops as a posse comitatus; Jane H. Pease and William Henry Pease, *The Fugitive Slave Law and Anthony Burns : A Problem in Law Enforcement* (Philadelphia: Lippincott, 1975), 42.

posse comitatus. There was no legislative act supporting the Cushing Doctrine, but the doctrine was generally accepted as law because it improved enforcement of the Fugitive Slave Act of 1850, which is why it initially garnered southern support. The doctrine was primarily used in the West and had little effect in the South prior to the Civil War. In the West, the federal army was the only “police force” available for use, leaving civil authorities the choice of lawlessness or the Cushing Doctrine. After the Civil War, Reconstruction brought the Cushing Doctrine into use in the South due to the resources required to exercise police and judicial functions.⁴⁰ The 11 southern states that succeeded from the Union, some of which supported the Cushing Doctrine originally, would have a lot to say about it once they were accepted back into the Union.

The Cushing Doctrine provided the federal government with greatly increased power, but the case of the ex parte Milligan attempted to reduce these powers. In 1864, Lambin P. Milligan and four others decided to steal a few weapons and invade a Union prisoner-of-war camp in Indiana. Once the prisoners were liberated, they planned to overthrow the Indiana state government and free more confederate prisoners. Eventually, their plan was to culminate in the take-over of the states of Ohio, Michigan, and Indiana. However, the plan was uncovered prior to execution. Milligan and his four accomplices were charged, found guilty and sentenced to death by a military tribunal on 2 May 1865.⁴¹ Luckily for the five men, they were sentenced in 1864 but were not scheduled to be executed until May of 1865. The Civil War ended in April of 1865 and the United States Supreme Court decided to review their conviction on appeal. Interestingly, the former U.S. Attorney General, Jeremiah S. Black, and a future President James A. Garfield were part of the team who argued for the petitioner. The Supreme Court decided that military tribunals are unconstitutional when civilian courts are operational, even during times of war. Representatives of the petitioner argued that military laws are for the military organization. That if the military was allowed to try civilians, American elites, such as the presiding judges, would be subject to military laws and the whims of

⁴⁰ Coakley, *The Role of Federal Military Forces in Domestic Disorders, 1789-1878*, 132.

⁴¹ James A. Garfield and Miscellaneous Pamphlet Collection (Library of Congress), *Argument of the Hon. James A. Garfield in the U.S. Supreme Court, March 6, 1866, in the Matter of Ex-Parte L.P. Milligan, W.A. Bowles, and Stephen Horsey* (Washington: Joseph L. Pearson, printer, 1866), 3.

military officers.⁴² This was a rather convincing argument and resulted in the first legal action to limit military legal powers and jurisdiction. However, the Army's use of the Cushing Doctrine would be validated by the Civil Rights Act of 1866. This Act legalized the actions of U.S. Marshalls to organize a posse comitatus and summon the militia and federal forces to their aid. The Civil Rights Act of 1866 also set the stage for a showdown between congressional members of the South and the North regarding the legitimacy of federal forces acting as a posse comitatus.

On 18 June 1878, Congress passed the Posse Comitatus Act (PCA). Through this Act, Congress sought to limit the Presidential control of the Army in domestic affairs.⁴³ The Cushing Doctrine was officially renounced in the PCA of 1878, which passed through Congress because of Southern resentment stemming from the use of federal forces as a posse comitatus during Reconstruction. The Posse Comitatus Act (PCA) bars members of the U.S. military from enforcing domestic laws, i.e. conducting investigations into alleged criminal activity or arresting suspected criminals, *under certain circumstances*. The PCA represents a reconciliation between the government and the will of the people. People tend to believe that the PCA provides more protection than it really does. The PCA was an attempt by the American elites to reconcile the differences between their ideology and that of the masses. The intent of the PCA was never to reduce the power of the federal government to a point where order was subjected to the impulses of the populace. It is intended to make it difficult for the federal government to infringe on the constitutional rights of American citizens. It does not, however, make it impossible to do so. The PCA states that the President can employ federal troops and temporarily remove constitutional rights, "under circumstances expressly authorized by ... Act of Congress." These circumstances are outlined in the Insurrection Act, and two are highlighted below.

⁴² Garfield and Miscellaneous Pamphlet Collection (Library of Congress), *Argument of the Hon. James A. Garfield in the U.S. Supreme Court, March 6, 1866, in the Matter of Ex-Parte L.P. Milligan, W.A. Bowles, and Stephen Horsey*, 11, 22.

⁴³ Clayton D. Laurie and Ronald H. Cole, *The Role of Federal Military Forces in Domestic Disorders, 1877-1945*, Army Historical Series (Washington, D.C.: Center of Military History For sale by Supt. of Docs, U.S. G.P.O., 1997), 58.

§ 331. Federal aid for State governments: “Whenever there is an insurrection in any State against its government, the President may, upon the request of its legislature or of its governor if the legislature cannot be convened, call into Federal service such of the militia of the other States, in the number requested by that State, and use such of the armed forces, as he considers necessary to suppress the insurrection.”⁴⁴

§ 332. Use of militia and armed forces to enforce federal authority: “Whenever the President considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States in any State or Territory by the ordinary course of judicial proceedings, he may call into Federal service such of the militia of any State, and use such of the armed forces, as he considers necessary to enforce those laws or to suppress the rebellion.”⁴⁵

Actions taken under the “Insurrection Act” have been exempt from the PCA for a long time. The name “Insurrection” was changed to “Enforcement of the Laws to Restore Public Order in January 2008, and the President’s powers were increased, significantly for the purposes of this study, to include natural disaster, other public health emergencies, etc., with the condition that domestic violence has occurred to the extent that the State is incapable of maintaining order.”⁴⁶

Summary

The 1802 Portsmouth fire signaled the beginning of a shift in the norms of America. In 1803, Congress made its first-ever attempt at legislating federal disaster relief. The “modalities” of norms, the market, architecture, and the law worked together to regulate human behavior.⁴⁷ The 1803 Congressional Act opened the door to other, similar requests because American citizens reminded Congress of this act when they

⁴⁴ U.S. Government, “Title 10 Chapter 15,” Library of Congress, <http://uscode.house.gov/download/pls/10C15.txt>. (Accessed 21 Jan 2011)

⁴⁵ Government, “Title 10 Chapter 15.”

⁴⁶ ———, “Title 10 Chapter 15.”

⁴⁷ Lessig uses the term “modalities” in discussing the regulatory forces of norms, laws, the market and architecture. Due to this, the term will be used through the thesis when discussing these forces as a whole; Lawrence Lessig, “The New Chicago School,” in *Social Norms, Social Meaning, and the Economic Analysis of Law* (Chicago: The Journal of Legal Studies, 1998), 663.

were under duress. Congress was unprepared to deal with the results of its actions and eventually acquiesced to the desires of the American public; but this process took time, requiring what could be considered another act with unintended consequences--the passage of the Freedmen's Bureau.

Indian and foreign support is an aspect of market forces and American national hardships never last forever. Market forces initially supported a fiscally conservative congressional mentality due to the size and character of the federal government--small, weak and under-resourced. However, as is currently still true in Congress, there was a desire by American elites to grow the economy. As growth occurred, disasters occurring abroad began to have the potential to negatively impact the economy at home. In that sense, the market and not altruism motivated Congress to assist other countries, but this assistance had domestic implications.⁴⁸

The historical events of the conspiracy of Aaron Burr, the legal interpretation of Caleb Cushing and the Ex Parte Milligan case are included to show how the ideologies of the masses and elites were reconciling. Laws are seldom sufficient for their intended purpose after the first passage. It is usually necessary to take incremental steps toward a final solution until the desired legal goal is accomplished. For American society, that meant electing Presidents who discarded their revolutionary ideologies when faced with the challenges of office. An example of the alteration of federal laws occurs when an attorney general provides a liberal interpretation of federal laws to allow the government to respond quickly and efficiently until such time that the laws were explicitly refined. The case of the Ex Parte Milligan is another example where the public reined in the power of the military through the effective use of the American judicial system. As was experienced after 9/11, there are times when new laws are necessary and liberal interpretations of existing laws required to ensure our national security. However, 9/11 also showed us that a public conscience is always present to ensure that the government properly balances the threat with the appropriate response and prevents any unnecessary loss of freedom. To be sure, if the federal government is gaining more power, that usually equates to a loss of some liberties by the people. In a democratic society,

⁴⁸ Foster, *The Demands of Humanity : Army Medical Disaster Relief*, 10.

increased power probably cannot occur simultaneously with increased liberties. A continual battle between the masses and elites is necessary to balance governmental powers with losses in liberty as a nation creates laws to mitigate existing threats.

Analysis

American culture evolved through a compromise that assures the people that federal forces will not be used haphazardly in domestic affairs, assures the President that he has the power to use military force when necessary, and Congress that it has the ability to maintain control of the process. This reconciliation is best illustrated by a requirement in Title 10, Section 334, which requires the President, before using federal troops in domestic affairs, to first publicly order any insurgents to disperse, a carry-over from the Militia Act of 1792.⁴⁹ This places the onus on the President to state his intentions publicly and be accountable for his actions. For federal disaster relief efforts, the PCA created a slow and inefficient federal response apparatus in order to prevent Presidential or military abuse of civil rights. In doing so, this Act made DOD vulnerable to critics who claim its response to national disasters is slow and inadequate.⁵⁰ Given the details of how this Act came about, it is ironic that Congress is one of the biggest critics of DOD's MSCA role, since it is the primary cause of the inefficiencies. In any event, these cases illustrate that Congress must alter laws from time-to-time to meet existing threats. It seems no law is applicable forever. More importantly, the PCA is a Civil War-era compromise that made delays in the federal government's disaster relief response acceptable, as long as these delays were caused by a state's effort to manage the crisis

Conclusion

What has this analysis illustrated? Decisions made long ago cast a long shadow. That is to say, American culture, shaped and molded during the early years of the republic, affects decisions about disaster relief today. As our discussion thus far has shown:

⁴⁹ vLex, "10 Usc 334 - Sec. 334. Proclamation to Disperse," (2011), <http://vlex.com/vid/sec-proclamation-disperse-19222198#>. (Accessed 21 January 2011)

⁵⁰ U.S. House of Representatives, "Final Report of Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina," in *A Failure of Initiative* (Washington D.C.: Government Publishing Office, 2006), 202.

- 1) The federal government has 'excess capacity' that can aid in disaster relief.
- 2) The federal government must respond in support of states dealing with disasters they are incapable of managing. This response is necessary even if states should have and did not properly prepare for the emergency.
- 3) The federal government must manage the limited federal resources to support the needs of the nation and the states.
- 4) The federal government may have to alter laws to meet existing threats.
- 5) Delays in the federal response to domestic emergencies are acceptable if these delays are caused by a state's effort to manage the crisis.

The following chapters examine this logic further. The case studies of Hurricane Andrew and Katrina are analyzed to determine how the local, state and federal officials interact. If the federal government fails to respond promptly when states are unable to manage the crisis, what is the cause of the delay? How does the federal government know when states need assistance? Are laws still altered to meet existing threats? Answer to questions like these will shed light on the root cause of disaster relief efforts because poor communication and coordination are merely symptoms of the problem. The next two chapters endeavor to highlight what we believe are the problems of disaster relief in the hopes of generating a discussing, which lead to solutions.

Chapter 3

Hurricane Andrew

I am outraged by the federal government's pathetically sluggish and ill-planned response to the devastating disaster wrought by Hurricane Andrew in Florida and Louisiana, which has left many lives in shambles. Time and again, the federal government has failed to respond quickly and effectively to major disasters, and no lessons have been learned from past mistakes.

Senator Barbara Mikulski (D-MD), 3 Sept, 1992

The previous chapter revealed that there are certain American expectations pertaining to disaster relief that the federal government must recognize. These expectations evolved through the unique American experience and influence how the American public gauges relief operations in the aftermath of a disaster. These expectations are:

- 1) The federal government has 'excess capacity' that can aid in disaster relief.
- 2) The federal government must respond in support of states dealing with disasters they are incapable of managing. This response is necessary even if states should have and did not properly prepare for the emergency.
- 3) The federal government must manage the limited federal resources to support the needs of the nation and the states.
- 4) The federal government may have to alter laws to meet existing threats.
- 5) Delays in the federal response to domestic emergencies are acceptable if these delays are caused by a state's effort to manage the crisis.

These five expectations tend to regulate human behavior for individuals and groups. Local, state, and federal officials must not treat American expectations as a checklist but must remain cognizant of the confluence of these expectations and create plans that prepare for and capitalize on the multi-ordered effects expectations produce.

Hurricane Andrew illustrates how the federal government failed to provide prompt and adequate support to a disaster that was beyond the ability of local and state officials to manage. Disasters that require extensive federal support are unusual, but do occur. The Federal Emergency Management Agency (FEMA) categorizes events that

require extensive federal support as catastrophic events. A catastrophic event is "...any natural or manmade incident, including terrorism, that results in extraordinary levels of mass casualties, damage, or disruption severely affecting the population, infrastructure, environment, economy, national morale, and/or government functions."¹ This definition seems to highlight the essential problem with disaster relief operations. Natural disasters are uncontrollable because nature is uncontrollable. But it is the outcome of the disaster not the event that warrants the classification of *catastrophic event*. If the hardships caused by the disaster are limited, the event is not catastrophic. With this reasoning, the surest measure to prevent casualties is evacuation, even in the case of a Category Five hurricane. Measures such as improved building codes help, but not to the extent of removing people from harm's way. Here the choices seem simple, either evacuate everyone in the areas potentially affected or prepare for casualties, but the problem is more complicated than it appears. Evacuation is a daunting task and is limited by the manpower available. In simple terms, the National Guard of any state is resource-constrained. In the case of a catastrophic event, states must first recognize that the event is something beyond their capability to manage, ask for federal support, and then the federal government must provide support in a manner that is proportionate to the threat. A prompt and efficient response is *de rigueur*² in preventing the exacerbation of an already catastrophic event, but getting agencies within local, state, and federal governments to interact effectively is a difficult task. The case of Hurricane Andrew sheds light on some of these difficulties.

Hurricane Andrew

Andrew became a hurricane on 22 August 1992 and approximately 36 hours later, reached its peak strength of Category 5. The storm was a Category 4 hurricane when it passed over the Bahamas on 23 and 24 August. Hurricane Andrew then took a direction toward the southeast coast of Florida, making landfall on 24 August at 0505hrs near Homestead AFB, now Homestead Air Reserve Base. It continued westward and crossed the southern tip of the Florida peninsula in approximately four hours. Andrew entered

¹ Federal Emergency Management Agency, "National Response Framework," ed. Department of Homeland Security (FEMA, 2008), 42.

² Something that is required by custom, honor, or etiquette.

the Gulf of Mexico and later hit a lightly populated area in Louisiana about 20 miles west-southwest of Morgan City at Category 3 strength. The storm lost strength quickly after making landfall in Louisiana; dropping to tropical strength after 10 hours and to depression strength 2 hours afterward, before departing Louisiana.³ Hurricane Andrew was the most expensive storm to hit the United States at that time, with damages estimated at \$25 Billion dollars. Andrew had sustained winds up to 165 mph, making it only the third Category 5 hurricane with winds that exceeded 155 mph.⁴ The storm killed 26 people and indirectly caused the death of 82 others.⁵

Hurricane Andrew caused little flooding, and in proportion to its measured strength, did relatively little damage. The storm was small in size and made landfall on a sparsely populated area of the Florida coast. If it landed a few nautical miles north, it would have hit a heavily populated and commercialized area causing much more destruction and loss of life. Florida made preparations for the storm, but it was difficult to determine exactly what to do. There is always some ambiguity associated with forecasting storm size, strength, and direction of travel.⁶ The uncertainty in forecasting causes problems for local, state, and federal officials, who must rely on it to make life-saving decisions. For example, the National Hurricane Center predicted that Hurricane Katrina had an equal chance of hitting any point up and down both coasts of Florida. Officials understandably lacked the confidence in weather forecasts that are mercurial in nature. Moreover, the decisions of state officials during catastrophic events have consequences that exceed those of their everyday life. Each time Florida officials acted on a false warning the state stood to lose an estimated \$50 million of its limited disaster-

³ Ed Rappaport, "Preliminary Report: Hurricane Andrew, 16-28 August, 1992," National Hurricane Center, <http://www.nhc.noaa.gov/1992andrew.html#FOOT1>. (Accessed 21 Mar 2011)

⁴ National Oceanic and Atmospheric Administration, "After 10 Years, Hurricane Andrew Gains Strength," United States Department of Commerce, http://www.nhc.noaa.gov/NOAA_pr_8-21-02.html. (Accessed 22 Mar 2011), 1.

⁵ The Miami Herald reported on 31 January 1993 that it could relate at least 43 additional (indirect) deaths in addition to the 39 previously reported in Dade County to Hurricane Andrew. Rappaport, "Preliminary Report: Hurricane Andrew."

⁶ American Meteorological Society, "Hurricane Detection, Tracking, and Forecasting: A Policy Statement of the American Meteorological Society as Adopted by the Executive Committee on 23 April 1993," American Meteorological Society, <http://www.ametsoc.org/policy/hurr2.html>. (Accessed 29 Apr 2011)

relief budget.⁷ The difficulty for state leaders faced with a catastrophic event is not in the choices but the consequences of the choices.

When faced with uncertainty, people tend to take steps that make events more predictable, but this is not always possible in disaster-relief operations. Complexity theory suggests that within a system elements are interconnected in a manner where changes to some of the elements produce an overall change in the behavior and properties of the system that is different from how the system originally operated.⁸ The American disaster-relief system is multi-layered, built in a manner where increased support is based on lower-level effort. For example, federal support requires a state request for support, which will not come if the National Guard is able to manage the crisis, which is contingent upon local emergency managers executing the right evacuation plan properly. This example illustrates the systematic nature of disaster relief efforts but falls short of illustrating how complex the system is. Many factors besides forecasting and evacuation plans influence a governor to request or not request federal support. Each factor is a potential point of friction where elected officials may find it increasingly difficult to determine the right course of action. According to Clausewitz, friction “is the force that makes the apparently easy so difficult.”⁹

There is probably no remedy for friction, but experience is the best teacher in how to manage it. As the German theorist stated, one cannot hope to overcome friction if one has not experienced it.¹⁰ Clausewitz was referring to war, but experience reduces uncertainty in all its forms. Unfortunately, the South Florida emergency managers did not have any experience managing a storm with the strength of Hurricane Andrew.¹¹ This lack of experience is illustrated by the failure of the South Florida Emergency

⁷ Walter Gillis Peacock, Betty Hearn Morrow, and Hugh Gladwin, *Hurricane Andrew : Ethnicity, Gender, and the Sociology of Disasters* (London ; New York: Routledge, 1997), 77.

⁸ Harry R. Yarger, *Strategy and the National Security Professional: Strategic Thinking and Strategy Formulation in the 21st Century* (Westport, Conn.: Praeger Security International, 2008), 29-30.

⁹ Carl von Clausewitz, Michael Eliot Howard, and Peter Paret, *On War* (Princeton, N.J.: Princeton University Press, 1984), 119, 121.

¹⁰ Clausewitz, Howard, and Paret, *On War*, 119.

¹¹ The 1935 Labor Day Hurricane was the last Category 4 or higher storm to hit Florida. Southern Region Headquarters National Weather Service, "NWS Marks 75th Anniversary of the 1935 Labor Day Hurricane," National Oceanic & Atmospheric Administration (NOAA), <http://www.srh.noaa.gov/srh/srnews/stories/2010/1935.htm>. (Accessed 23 Mar 2011)

Management Plans to consider how to provide disaster relief in an environment with degraded communications and limited information.¹² They amazingly assumed that all communications would be available, and information would be accurate and free-flowing. However, this inexperience did not limit their efforts. Four days prior to the storm hitting South Florida, the Water Management District lowered the levels of lakes in the Upper Kissimmee Valley. Broward and Palm Beach Counties Emergency Directors placed key personnel on telephone stand-by the day prior to Andrew making landfall. Police officers drove down the streets announcing mandatory evacuations, knocking on doors of multi-story apartment buildings, and asking people to seek shelter.¹³

The emergency managers could have done a better job in preparing South Florida for Hurricane Andrew. The U.S. Army's Hurricane Andrew Assessment report stated that the deaths were limited due to evacuations carried out by local emergency managers.¹⁴ However, this statement ignores the storm's sparsely populated impact point and focuses on evacuees, not those left behind. There is no doubt that the evacuation of a major city requires a herculean effort, but the measurement of success has to be based on those left behind, not those evacuated. Disaster relief is more than a rebuilding effort simply because evacuations are never thoroughly completed. Further, negative publicity comes most immediately from the government's failure to provide relief to those who did not evacuate. This expectation is illustrated in Criterion 1 of this study that the federal government must provide disaster relief even when states should have, but did not manage the crisis. The evacuation may have limited the casualties, but the impact point of the storm was more influential in this measure. For example, South Florida emergency managers evacuated approximately 71% of Dade County, the highest percentage of any county in the affected area. Dade County had a population of 1,937,094 in 1990, leaving 561,757 people left to deal with the ravages of the storm.¹⁵ The assessment did admit

¹² Peacock, Morrow, and Gladwin, *Hurricane Andrew : Ethnicity, Gender, and the Sociology of Disasters*, 77, 81.

¹³ Kristine Harper, *Hurricane Andrew* (New York: Facts On File, 2005), 20-22.

¹⁴ Buckley Post, Schuh & Jernigan, Inc., "Hurricane Andrew Assessment: Review of Hurricane Evacuation Studies Utilization and Information Dissemination," ed. United States Army Corps of Engineers and Federal Emergency Management Agency (United States Army, 1993), 1-1.

¹⁵ United States Census Bureau, "American Factfinder," Department of Commerce, http://factfinder.census.gov/servlet/SAFFPopulation?_event=Search&_name=Miami-

that “had Andrew's track been slightly farther north, a significant number of homes that were not evacuated would have been flooded,” but did not draw any conclusions as to what would have happened to those not evacuated.¹⁶ The tools we use to measure performance after a disaster matter because the results help us prepare for the next disaster. The South Florida emergency managers did the best they could, but their inexperience could have led to a larger number of deaths. An evacuation that left approximately 561,000 people should not be considered a success. The 561,000 people left behind required food, water, and shelter and posed an embarrassing spectacle for elected officials as disaster relief became increasingly delayed. Considering the experience level of emergency managers, disaster preparation went well, but mistakes in the early stages led to increased suffering later in the relief operations. The inexperience of South Florida emergency managers also resulted in poor coordination between state and federal officials. Many local and state officials neither understood nor did they take the time to learn of the federal government’s role in disaster relief operations. They expected the federal government to take the lead in recovery operations and federal agencies were determined to remain in a support role.

The federal government’s role in relief operations is not to take over. Its role is to assist local and state officials in providing disaster relief. For Hurricane Andrew, FEMA was waiting for the state of Florida to assess the damage and provide an estimate of what was needed. The state of Florida was unaware of its responsibility to assess needs and therefore had no plans to do so. Florida officials were not aware of their responsibilities by law and expected FEMA to take the lead in recovery operations, assessing damage, directing forces, and generally taking care of the problem. Local and state officials lacked the skills necessary to assess damage, and determine needs in catastrophic events like Hurricane Andrew.¹⁷ This resulted in the state of Florida being without the necessary food, water and shelter during the initial phase of recovery operations. Two

dade&_state=&_county=Miami-dade&_cityTown=Miami-dade&_zip=&_sse=on&_lang=en&pctxt=fph. (Accessed 1 May 2011).

¹⁶ Post, "Hurricane Andrew Assessment: Review of Hurricane Evacuation Studies Utilization and Information Dissemination." 3-2.

¹⁷ Frank C. Conahan, "Disaster Assistance: DOD's Support for Hurricane Andrew and Iniki and Typhoon Omar (GAO.NSAID 93-180)," ed. Government Accountability Office (Government Accounting Office, 1993), 19.

days after Hurricane Andrew struck South Florida, approximately 2 million people were without electricity and in some places lines for clean water were 300-people long. On the third day, 35,000 people were housed in inadequate shelters and 1 million people remained with no electricity.¹⁸ Governor Lawton Chiles did not request federal support before or immediately after Hurricane Andrew struck Florida. He instead chose to rely on the state's National Guard to police the area--a job the National Guard did not have the manning to accomplish.¹⁹ The Governor activated 600 National Guard members who were quickly overwhelmed by events after the storm struck the coast. What made matters worse, the FEMA representative sent to Florida prior to Hurricane Andrew making landfall decided to setup headquarters in the capitol city of Tallahassee, 400 miles from the predicted impact point of the storm.²⁰ This distance was too large to properly assess damage in the aftermath of a major hurricane, a task FEMA did not plan to accomplish. When the Department of Defense (DOD) arrived on the scene, the engineers assessed the situation as "...extremely bad. Even after five days, there appeared to be little organization to the relief effort."²¹ Federal resources were mismanaged, with little aid reaching the intended recipients due to a lack of organization.

In fairness, FEMA may have learned from these mistakes, with a collaborative effort and a more *hands-on* process developed since Hurricane Andrew. According to a report, FEMA's organizational culture "has changed dramatically, from a formal, bureaucratic culture focused on processes to a less formal, action-oriented culture focused on results."²² Miskel suggested that FEMA's failure during Hurricane Andrew was the fault of the President. Local, state, and other federal agencies had no respect for the

¹⁸ Conahan, "Disaster Assistance: DOD's Support for Hurricane Andrew and Iniki and Typhoon Omar (Gao.Nsiad 93-180)." 21.

¹⁹ Sandra K. Schneider, *Flirting with Disaster: Public Management in Crisis Situations*, Bureaucracies, Public Administration, and Public Policy (Armonk, N.Y.: M.E. Sharpe, 1995), 98.

²⁰ James F. Miskel, *Disaster Response and Homeland Security : What Works, What Doesn't* (Westport, Conn.: Praeger Security International, 2006), 82.

²¹ Major Robert M. Ralston and Lieutenant Colonel Douglas L. Horn, "Engineers Respond to Operations Other Than War," *Engineer* 23, no. 2 (1993), <http://www.wood.army.mil/engrmag/Disaster%20Relief%20PDFs/Ralston%20&%20Horn.pdf>. (Accessed 24 Mar 2011), 9.

²² Jerry Ellig, "Learning from the Leaders: Results-Based Management at the Federal Emergency Management Agency," Mercatus Center, http://mercatus.org/sites/default/files/publication/MC_GAP_RBMatFEMA_000329.pdf. (Accessed 23 Mar 2011), 4.

FEMA representatives on the scene in Florida because they seemed powerless due to their organizational relationship to the President. This concept is known as *power distance*, where there is an inequality between individuals as it pertains to power, wealth and prestige.²³ For organizations, inequality is structural and serves a functional purpose; however, Hofstede suggests that the quantity of power one has is determined by the individual but measured by society. Power distance is based on a society's interpretation of power and selection of power positions. Thus the closer one is to the position of power or the individual in power, the more power one is *expected* to have. FEMA representatives seemed too far removed from the President to have the authority to get anything done. According to Miskel, this forced the President to appoint Andrew Card as Tsar of the relief effort, a precaution he should have taken prior to Andrew making landfall in Florida.²⁴ Miskel's line of reasoning absolves FEMA of any blame at all because the power distance was initially too great for it to make a difference. FEMA made a lot of mistake, but blame goes to the President because he did not empower FEMA to support relief operations.

The Federal Government Must Respond With Disaster Support

DOD eventually took the lead role in the Hurricane Andrew disaster relief efforts due to the deteriorating circumstances in South Florida, but it was not the only federal agency participating in the relief effort.²⁵ There was poor coordination between state and federal officials immediately after Hurricane Andrew departed, and this continued after DOD took the lead role. DOD came prepared with a plan, but it was poorly coordinated with other agencies involved in the disaster relief efforts. The result was somewhat chaotic but still an improvement over the lack of federal response South Florida experience immediately after Andrew.²⁶ DOD's actions as the lead federal agency in the Andrew effort fulfilled the American expectation of the federal government providing

²³ Geert Hofstede, *Cultural Consequences: Comparing Values, Behaviors, Institutions, and Organizations across Nations* (Thousand Oaks: Sage, 2001), 79.

²⁴ Miskel, *Disaster Response and Homeland Security : What Works, What Doesn't*, 83.

²⁵ Conahan stated that when the situation deteriorated in South Florida after Hurricane Andrews departed, FEMA asked DOD to take over their role and return order. Miskel suggest that the President ordered DOD to take the lead role; Conahan, "Disaster Assistance: DOD's Support for Hurricane Andrew and Iniki and Typhoon Omar (Gao.Nsiad 93-180)." 15 Miskel, *Disaster Response and Homeland Security : What Works, What Doesn't*, 82.

²⁶ Schneider, *Flirting with Disaster : Public Management in Crisis Situations*, 99.

support when states are incapable of managing a crisis, but the response was not timely. FEMA was present prior to Hurricane Andrew making landfall but effective support did not occur until DOD took the lead role five days later. This delay led South Florida residents to believe that the President was more concerned about foreign affairs than the circumstances of South Florida.²⁷ Some have even suggested that the mismanagement of the Hurricane Andrew relief efforts contributed to President Clinton winning the election over President Bush.²⁸ In actuality, the President wasted no time providing necessary federal resources after the realization that the federal government was not meeting anyone's expectations. On 28 August, Joint Task Force Andrew was created, signaling the President's decision to use federal troops to provide disaster relief. DOD committed over 22,000 troops, with a prioritized plan to provide water, food, and medical services to the survivors, establish overall security, and then repair public services, schools, and roads.²⁹ This was a commendable effort, but why did DOD not intervene earlier?

DOD Directive 3025.1, *Military Support to Civilian Authorities*, provides rules on domestic military deployment for disasters. Military commanders can respond immediately to emergencies when there is a request from civil authorities for support.³⁰ In the case of natural disasters, it does not matter if there is an imminent threat to life, or federal property, the military has to wait until directed or requested to support by civil authorities. However, DODD 3025.12, *Military Assistance to Civil Authority*, provides military commanders "emergency authority" and defines it as a "sudden and unexpected civil disturbances (including civil disturbances incident to earthquake, fire, flood, or other such calamity endangering life),"³¹ thereby leaving open an interpretation which allows the military to respond to natural disasters without approval. This interpretation conflicts with the explicit statement in DODD 3025.1, prohibiting DOD involvement in natural disasters without a request from civil authorities. Given this confusion, any military

²⁷ Robert Pear, "Hurricane Andrew; Breakdown Seen in U.S. Storm Aid," *The New York Times*, <http://www.nytimes.com/1992/08/29/us/hurricane-andrew-breakdown-seen-in-us-storm-aid.html?scp=4&sq=Hurricane%20Andrew&st=cse&pagewanted=1>. (Accessed 29 Apr 2011), 1.

²⁸ David Weigel, "Skirting Political Disaster," *Campaigns & Elections* 26, no. 10 (1996), 24.

²⁹ William Glenn Robertson and Lawrence A. Yates, "Block by Block : The Challenges of Urban Operations," U.S. Army Command and General Staff College Press, <http://www.cgsc.edu/carl/resources/csi/content.asp>. (Accessed 24 Mar 2011), 425.

³⁰ Department of Defense, "Military Support to Civil Authorities," ed. USD(P) (GPO, 1993), 7.

³¹ ———, "Military Assistance for Civil Disturbances (Macdis)," ed. USD(P) (GPO, 1994), 4.

commander faced with the dilemma of intervening in state affairs to support disaster-relief efforts would be wise to conform to the most stringent interpretation of DOD regulation, i.e. seek approval, or wait for a request.

According to the New York Times, DOD was prepared to support the victims of Hurricane Andrew and tracked the storm from its inception off the coast of Africa. This news report cited White House legal concerns and bureaucratic red tape as the cause of the federal government's slow initial response.³² Bureaucratic red tape and legal concerns may have contributed to a slow federal response, but the requirement of a governor's request was not immediately satisfied. The New York Times wrote that the first request for DOD support came from the Governor of Florida on 27 August 1992.³³ The governor countered this statement with a claim that he made an initial request for Army Reserve engineers on 24 or 25 August, but this is not an effective counter. The request for Army Reserve Engineers most likely meant that the governor needed assistance removing debris, and rebuilding the infrastructure. This would not have satisfied the immediate food and water needs of the Florida residents. Moreover, reliance on a specific segment of the U.S. Army may have operational consequences for the Army and relief operations. This is supported by the experiences of 1/22d Infantry in Hurricane Andrew. "Less than 2 months after it returned to Fort Drum, the battalion was notified that it was to deploy to Somalia in December 1992...national missions can emerge at any time."³⁴ It would have been wiser to request federal support and allow the Army to determine the composition of this dedicated force. Regardless, Governor Chiles was probably not attempting to request the right force structure. He was merely requesting what was needed. It is not accidental that he did not make a broad request for federal support. The request for federal troop support has consequences, and the governor may have feared that some of these consequences would be negative.

³² Pear, "Hurricane Andrew; Breakdown," 1.

³³ ———, "Hurricane Andrew; Breakdown," 1.

³⁴ James A. Wombwell and Combat Studies Institute (U.S.), *Army Support During the Hurricane Katrina Disaster* (Fort Leavenworth, Kan.: Combat Studies Institute, 2009), 15-16.

Fear Associated With Federal Troops

The presence of federal troops means that the state is incapable of protecting its citizens. Because politicians have reelection in mind, they perceive an increased cost to requesting federal troop support. Making this request becomes more difficult when one considers that storms are somewhat unpredictable, leaving the possibility of a governor making a request to support a disaster that does not materialize. There are also external pressures. The President may not agree to support a state's request for federal troops. A spokesman for the governor of Florida claims that federal officials denied the initial request for federal troops, replying that "the state must first mobilize all the engineer units in the Florida National Guard."³⁵ There is also an effort on the part of states to act solely with internal resources, desiring little federal involvement in state affairs. There is a belief that states have constitutional authority for power and control over their territory, and the federal government has no place in state affairs unless asked. When asked, the federal response must be quick enough to eliminate or minimize loss of life.³⁶ State efforts to maintain power and control are not bad necessarily; however, there are inefficiencies inherent in a checks-and-balance system such as the United States. These inefficiencies require consideration as states create their disaster relief policy, strategy, and plans. In a self-help relief system, a failure to consider the inherent federal delays is a failure of the state and leads to an ineffective response.

Given governors' desires to maintain power and control, coupled with the inherent threat of negative consequences associated with any decision; planning and strategy are subjected to what is known as the *principle of psychological commitment*. Psychological Commitment says that people are devoted to actions that 1) are chosen free from external pressures; 2) are publicly visible; 3) are difficult to change; and 4) are explicit in defining our attitudes, values and future behavior.³⁷ This principle works

³⁵ Pear, "Hurricane Andrew; Breakdown." 1.

³⁶ Council of State Governors believes that states are responsible for the protection of its citizens and DOD is only needed in rare instances of catastrophic events; The Council of State Governments Intergovernmental Affairs Committee, "Resolution on the Role of the Military in Disaster Response," Counsel of State Governments, <http://www.csg.org/knowledgecenter/docs/MilitaryResponse.pdf>. (Accessed 29 Mar 2011), 1.

³⁷ Jeffrey Pfeffer, *Managing with Power: Politics and Influence in Organizations* (Boston: Harvard Business School Press, 1994; reprint, 1994), 192.

against change even when it is clear change is necessary. For state leaders, the presence of federal troops indicates that they failed to properly plan, organize, and budget for a pending disaster. When faced with such a failure, one may think that the likely course of action would be different than those previously attempted. Psychological commitment suggests that people facing failure rarely choose a different course of action. Instead, they increase their investment and commitment to actions that are failing in an attempt to be successful—to prove that they were right. Governor Chiles has never explained why he requested support from only the Army Reserve engineers but the fear associated with federal troops operating in Florida may have been influential.

From the perspective of the federal government, unneeded DOD support is a financial and military waste of resources. As Clausewitz noted, excessive force is more than a waste because it leads to weakness elsewhere.³⁸ Hurricane Andrew did not provide difficult choices in the balancing of resources, but the requirement to balance resources is a consideration that delayed the federal response. This is evident by the denial of Florida's initial request for federal troop support. The other factor was a desire to prevent a legal confrontation with state leaders grappling to maintain power and control. For state leaders, federal troops are the indicator that states are incapable of managing the disaster. Federal troops are not the object of fear, but the element that triggers fear. Due to state resistance, the President must consider how and when to employ federal troops.

For political leaders, there are risks associated with action and inaction. However, for the federal government, action probably carries more risk than inaction. It is safer for the federal government to respond in a slow and deliberate manner or maybe not act at all. Waiting for a request from state leaders before responding eliminates the appearance of an overzealous military operating domestically and puts the onus squarely on state leaders to organize, assess, and provide disaster relief. This option is the minimum required by law, but the Bipartisan House of Representative report, *Failure of Initiative*, suggests that the minimum required by law is unacceptable. The report contends that more initiative is required by DOD in disaster-relief operations. Initiative

³⁸ Clausewitz, Howard, and Paret, *On War*, 486.

is important but should not be the reason relief operations succeed or fail.³⁹ The issue is how to employ DOD in a prompt and effective manner, that is also satisfactory to local, state and federal leaders. This is illustrated by Hurricane Andrew, an event where DOD almost singularly carried the burden of disaster relief and where Governor Chiles waited three days to request this support. DOD has the preponderance of federal resources, but it is difficult to reach an agreement on when to use them. The ultimate determinant of military necessity in domestic affairs is the American people, but there is no consensus here either. Each individual's threshold of fear is different, and the federal government has the unenviable task of identifying when the fear threshold of the population has reached the point where it is acceptable to employ federal troops domestically. This is not to suggest that the victims' desire for federal support wavers in the face of danger, but the victims are too few to ensure the President of reelection. The solution for the federal government has been to wait until asked before intervening, because for disaster relief operations inaction is easier and safer than action.

Altering Laws

The poor response by Florida officials in the aftermath of Hurricane Andrew, led the Governor to appoint a panel to assess the response of emergency management personnel. The panel came up with 94 recommendations to improve Florida's readiness and interaction with federal agencies, which included amending the Robert T. Stafford Disaster Relief and Emergency Assistance Act.⁴⁰ In Recommendation #76 the panel requested that Congress amend the Stafford Act to require FEMA "representatives to serve more proactively following disasters as advisors to state and local emergency responders and to simplify processes for requesting federal assistance."⁴¹ The state of Florida elaborated on this recommendation stating that FEMA personnel should be

³⁹ U.S. House of Representatives, "Final Report of Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina: A Failure of Initiative," (Washington D.C.: Government Publishing Office, 2006).

⁴⁰ The report list 94 recommendations but some of the recommendation were outside of the scope for which the panel was created or the committee chose not to address them.

⁴¹ State of Florida, "The Governor's Disaster Planning and Response Review Committee Final Report--Hurricane Katrina," Florida Governor's Office, <http://www.floridadisaster.org/documents/Lewis%20Report%201992.pdf>. (Accessed 29 Mar 2011), 68.

allowed to assist state and local officials in the aftermath of a natural disaster since they have the resident knowledge in their agency of the best way to respond.

This recommendation highlighted FEMA's poor handling of disaster relief efforts after Hurricane Andrew and was an acknowledgement by the state of Florida that it lacked the experience to deal with certain disasters. However, the state of Florida indicated that it did not believe that FEMA would perform any better in the future with the follow-on recommendation. Recommendation #77 requested that Congress amend the Stafford Act "to provide for the pre-deployment or immediate activation of the military in response to a catastrophic disaster."⁴² The committee recognized that DOD is the only entity with the resources and training necessary for logistical, administrative, and humanitarian support. Florida wanted to ensure that DOD did not wait until asked to provide support by having the Stafford Act amended to direct DOD to create task forces that would start preparations immediately following a hurricane warning. Recognizing that DOD may resist on grounds that disaster relief efforts may negatively impact its primary mission of national security, the committee requested that DOD provide support in a "manner that does not prohibit execution of the primary national defense military mission."⁴³ These recommendations illustrate that Hurricane Andrew influenced Florida state leaders to alter their view of federal troops operating domestically and attempt to modify federal laws to reflect this view. However, these recommendations were not included in the Stafford Act. The current act allows DOD support only after the President receives and approves a request from the state governor.⁴⁴ The National Guard does a great job providing disaster relief, but it is probable that some catastrophic events will require the tremendous resources of DOD. Given the exclusion of Florida's recommendation in the latest Stafford Act, DOD resources will remain available, but suspended in abeyance, unless requested by states. Governors will have to figure out how to make this request without jeopardizing their reelection potential and their desire for power and control.

⁴² Florida, "The Governor's Disaster Planning and Response." 68.

⁴³ ———, "The Governor's Disaster Planning and Response." 68.

⁴⁴ United States Congress, "Robert T. Stafford Disaster Relief and Emergency Assistance Act, as Amended, and Related Authorities," GPO, http://www.fema.gov/pdf/about/stafford_act.pdf. (Accessed 5 Apr 2011), 40.

Conclusion

Hurricane Andrew was a large storm that landed in a sparsely populated area and moved quickly over the state of Florida, minimizing the toll on human lives. The emergency managers of Florida were inexperienced and made mistakes but overall did a good job preparing for the storm. The storm required a massive evacuation plan and the lowering of area waters to prevent flooding. Much restoration was required in South Florida due to Hurricane Andrew, but relief efforts were plagued by a lack of communication between local, state and federal agencies. However, poor communication and coordination are merely symptoms of the problem. Hurricane Andrew highlights the struggle between local, state and the federal government, which has been going on since the end of the American Revolutionary War. Who is in charge? The struggle is one of power where the elites are concerned about getting reelected. The President is also concerned with reelection but has the additional burden of supporting disaster relief in the required manner.

This case study highlights the importance of American expectations as they pertain to disaster relief. The federal government must support states when they are unable to manage a disaster, properly manage resources and alter laws as necessary to ensure the safety of citizens. If states are unable to protect their citizens it is the responsibility of the federal government to do so. In the end, governors must figure out when the situation requires a request for support from the federal government. This seems to be the most important lesson drawn from this case study.

Chapter 4

Hurricane Katrina

Future ages [should know] that whosoever set themselves up in opposition to the laws, or think themselves above the law, will in the end find themselves mistaken.

Lord Chief Justice, Sir John Willes (Chief Justice of the Court of Common Pleas)

On 23 August 2005, Hurricane Katrina was born as a tropical depression off the southeastern coast of the Bahamas. The tropical depression increased in strength the next day, moving westerly through the Bahamas toward Florida. On 25 August 2005, around 0630 EDT, Hurricane Katrina landed on the coast of Florida as a Category 1 hurricane, between North Miami Beach and Hallandale Beach.¹ Katrina stayed over Florida for approximately seven hours then moved into the Gulf of Mexico to recharge before assaulting Mississippi, Alabama, and Louisiana.² The storm remained in the Gulf of Mexico for three days, powering up to a Category 5 storm with winds exceeding 175 mph.³ On 29 August, Hurricane Katrina landed in Grand Isle, Louisiana at Category 3 strength, with wind speeds of 125 mph. The storm weakened as it moved inland leaving rain as the biggest concern for citizens within its path. The rain bands produced floods but also tornadoes as far away as Georgia. For New Orleans, the rain alone was enough to cause significant property damage and loss of life; however, the condition of the levees made things worse. The levees separate New Orleans from the surrounding lakes, and their breach flooded 80% of the city by 31 August. In addition to the rain, Katrina caused 20-30 foot storm surges, which flooded areas around Gulfport, Mississippi, and led the city of Mobile, Alabama, to implement a dusk-to-dawn curfew.

The Department of Energy estimates that the damage to oil refineries reduced oil production in the Gulf of Mexico by 2 million barrels a day.⁴ Market concerns regarding

¹ National Oceanic and Atmospheric Administration (NOAA), "Hurricane Katrina NOAA National Climatic Data Center," NOAA, <http://www.ncdc.noaa.gov/special-reports/katrina.html>. (Accessed 17 Mar 2011).

² James F. Miskel, *Disaster Response and Homeland Security : What Works, What Doesn't* (Westport, Conn.: Praeger Security International, 2006), 93.

³ National Oceanic & Atmospheric Administration (NOAA), "Hurricane Katrina--Most Destructive Hurricane Ever to Strike the U.S.," NOAA, <http://www.katrina.noaa.gov/>, (Accessed 17 Mar 2011).

⁴ Chart does not say 2 million explicitly but if you subtract the production of December of 2005, from what the production of May 2005, you get a loss of approximately 2 million barrels/day. U.S. Energy

the loss of oil production led to gasoline prices reaching record highs. Katrina cost the lives of 1833 residents with 1577 fatalities in Louisiana, 238 in Mississippi, 14 in Florida, 2 in Georgia, and 2 in Alabama.”⁵ However, the true number of fatalities may never be known due to the difficulty associated with determining who died when and from what. Louisiana categorized anyone who died during Hurricane Katrina as a fatality of the storm unless the investigation indicated otherwise, and there was little time for investigations. USA TODAY reported in November 2005 that there were 6,644 people reported missing after Hurricane Katrina.⁶ Like the fatalities, Louisiana had difficulty distinguishing between those missing due to the storm and those missing for other reasons. There is still disagreement over how many people are missing because of Hurricane Katrina. The greatest number of deaths in Louisiana was caused by storm surges, but many others died from fresh-water flooding. Katrina ranks as the third deadliest hurricane in U.S. history and the deadliest in the last 83 years.⁷ It is also the most costly with an estimated \$81 billion in total damage in the United States. After adjusting for inflation, the total damage cost of Katrina was about two times greater than that of Hurricane Andrew.⁸

The news and forecasts about Hurricane Katrina were well advertised. This information allowed Mississippi, Alabama, and Louisiana to take measures to limit the destructive impact of the storm. National Guard forces were alerted, emergency shelters activated, and essential supplies of food and water prepositioned. However, emergency evacuations in Louisiana were not initially mandatory. Deciding whether to force the evacuations of citizens is a difficult choice for elected officials. Ordering an evacuation when not needed can lead to a lack of participation in future evacuations. As it stood, 1.2 million people evacuated New Orleans and the surrounding area prior to Hurricane

Information Administration, "EIA Report on Hurricane Impacts of U.S. Energy," Department of Energy, http://tonto.eia.doe.gov/oog/special/eia1_katrina.html, (Accessed 17 Mar 2011).

⁵ Richard D. Knabb, Rhome, Jamie R., Brown, Daniel P., "Tropical Cyclone Report: Hurricane Katrina," National Hurricane Center, http://www.nhc.noaa.gov/pdf/TCR-AL122005_Katrina.pdf, (Accessed 2 May 2011), 11.

⁶ Kevin Johnson, "6,644 Are Still Missing after Katrina; Toll May Rise," USA TODAY, http://www.usatoday.com/news/nation/2005-11-21-katrina-missing_x.htm, (Accessed 2 May 2011).

⁷ Knabb, "Tropical Cyclone Report: Hurricane Katrina," 11.

⁸ ———, "Tropical Cyclone Report: Hurricane Katrina," 12.

Katrina hitting the coast of Louisiana.⁹ Unfortunately, due to the evacuation plan's inadequacy, over 100,000 people remained after the evacuation was completed.¹⁰ The large number of people remaining is understandable if one accepts Randal O'Toole's explanation. O'Toole contends that many residents in New Orleans did not own a car and therefore had no means of escape. The U.S. Census Bureau reports that there were approximately 50,000 households without a car in the year 2000. The Census Bureau collects population statistics every ten years, so no numbers were available for 2005, but it is important to emphasize that the 50,000 stated above is of households, not individuals. The city of New Orleans, like many local governments, persuaded its residents to rely on public transportation and discouraged the use of personally owned vehicles.¹¹ This left a large number of citizens with no way of reaching the predetermined evacuation points and the city had no plan for this scenario.

Local and state officials must consider the effects policies have on each other before implementation. The public transportation plan created additional challenges for local officials during Hurricane Katrina. Local officials attempted to overcome these challenges but mistakes hindered their efforts. The Mayor refused to accept an Amtrak offer to transport evacuees free of charge and decided to use city buses instead. The city sent buses to ad hoc evacuation points throughout the city, but forgot to station people or signs in the area to direct residents to the evacuation points.¹² Many people made it to the area but could not find the evacuation points, while others chose not to evacuate. Of the residents who chose to stay, some doubted the government's assessment of the dangers Hurricane Katrina posed, due to a delayed mandatory evacuation order by the city of New Orleans.¹³ These citizens did not see a sense of urgency by the local government and concluded that Katrina was not a significant threat. The evacuation plan alone indicates that local and state officials were unprepared to avoid the dangers that Hurricane Katrina posed, with little thought given to the evacuation plan.

⁹ Miskel, *Disaster Response and Homeland Security : What Works, What Doesn't*, 93.

¹⁰ James A. Wombwell and Combat Studies Institute (U.S.), *Army Support During the Hurricane Katrina Disaster* (Fort Leavenworth, Kan.: Combat Studies Institute, 2009), 48.

¹¹ Randal O'Toole, "Lack of Automobility Key to New Orleans Tragedy," Thoreau Institute, <http://ti.org/vaupdate55.html>. (Accessed 18 Mar 2011).

¹² Douglas Brinkley, *The Great Deluge: Hurricane Katrina, New Orleans, and the Mississippi Gulf Coast*, 1st ed. (New York: Morrow, 2006). 92

¹³ Miskel, *Disaster Response and Homeland Security: What Works, What Doesn't*, 94.

Federal Government Response: Timely and Effective?

Going in to Hurricane Katrina, local and state officials had an upward battle. 50,000 citizens were without transportation and many citizens chose not to evacuate because they did not believe the storm was a major threat. Facing an approaching storm and a significant number of citizens who chose not to evacuate, the governor relied heavily of the National Guard to conduct preparations. Since the National Guard is instrumental to the Katrina case, it is necessary to provide an explanation of its roles and responsibilities.

The National Guard is the DOD component primarily responsible for civil support and has unique authorities and legal status. It is the only U.S. Military force that is co-owned by the state and federal government. The National Guard can serve the country and the state as warfighters or civil-support personnel.¹⁴ The Posse Comitatus Act is not binding to the National Guardmen unless they are serving in a Title 10 capacity since this law is only applicable to federal military forces. The National Guard is a state's best tool in managing a crisis, because there is no federal law that limits the Guard's operational support of the state. The Guard can augment first-responders but manpower limitations can cause events to exceed its capabilities as they do not have the necessary number of people to manage large catastrophic events.

The Louisiana National Guard began preparations for Hurricane Katrina on 25 August when the storm was projected to hit the coast of Florida. On 26 August, General Landreneau recommended the activation of 2000 National Guardsmen after Governor Kathleen Blanco declared a state of emergency. Out of 2000 National Guardsmen, 160 were allocated to support the Louisiana State Police in contra flow evacuation. "contra flow" occurs when all lanes of traffic, into and out of a city, are used as one-way traffic for the evacuation of a city. The remainder of the 2000 Guardsmen staffed three Louisiana National Guard Joint Operations Centers, Emergency Management Assistance

¹⁴ Timothy J. Lowenberg, "The Role of the National Guard in National Defense and Homeland Security," National Guard Bureau, <http://www.ngaus.org>, 2-3.

Compact for aviation support, and the execution of disaster-support plans.¹⁵ On 27 August, General Landreneau recommended the call up of an additional 2,000 National Guardsmen.¹⁶ This was the largest activation of Louisiana guardsmen in history. The plan concentrated on the evacuation of New Orleans, but there is no indication in General Landreneau's statement to Congress that any portion of the plan focused on those citizens who did not want to or could not evacuate the area. 4,000 guardsmen may have been unprecedented for Louisiana but was inadequate to support local police effort, contra flow, search-and-rescue operations, protecting and controlling state aviation assets, and proper search of areas to ensure a thorough evacuation. This does not include the need mentioned by General Landreneau to staff the local operations center. As mentioned in the case of Hurricane Andrew, a successful evacuation is measured by the number of citizens left behind not the number evacuated, but this was not primarily the fault of the National Guard. Mayor Ray Nagin declared a state of emergency and ordered a mandatory evacuation of New Orleans on 28 August, one day prior to Hurricane Katrina reaching its shoreline.¹⁷

As previously mentioned, the federal government must respond in support of states dealing with disasters, when states are incapable of managing the event themselves, *and* this response is necessary even if states should have and did not properly prepare for the emergency. It is clear that local and state officials did not have a good plan to evacuate residents prior to Katrina making landfall, but why did the federal government not take over? There is a belief that once the President declared a national emergency for areas of Louisiana, the federal government simultaneously took charge of relief operations.¹⁸ However, a review of the Presidential Emergency Declaration Letter from FEMA suggests otherwise, stating the requirement to "mobilize equipment and resources necessary to protect public health and safety by *assisting* law enforcement with

¹⁵ Major General Bennett C. Landreneau, "Statement to Senate Homeland Security and Government Affairs Committee, Hurricane Katrina: The Defense Department's Role in the Response," ed. Senate Homeland Security and Government Affairs Committee (U.S. Congress, 2006), 3.

¹⁶ Wombwell and Combat Studies Institute (U.S.), *Army Support During the Hurricane Katrina Disaster*, 45.

¹⁷ CNN, "New Orleans Braces for Monster Hurricane," CNN, http://articles.cnn.com/2005-08-28/weather/hurricane.katrina_1_levees-mammoth-storm-kathleen-blanco?_s=PM:WEATHER, (Accessed 2 May 2011).

¹⁸ Ivor van Heerden, Mike Bryan, *The Storm: What Went Wrong and Why During Hurricane Katrina--the inside Story from One Louisiana Scientist* (New York: Penguin Group, 2006), 64.

evacuations, establishing shelters, supporting emergency medical needs (emphasis added).”¹⁹ Moreover, a letter from Kathleen Blanco, Governor of Louisiana during Hurricane Katrina, to the President recognized that Katrina was beyond the capability of the state to manage but did not give the lead role to the federal government. “I have determined that [Katrina] is of such severity and magnitude that effective response is beyond the capabilities of the State and affected local governments, and that *supplementary* Federal assistance is necessary to save lives, protect property, public health, and safety, or to lessen or avert the threat of a disaster (emphasis added).”²⁰ She specifically requested supplementary assistance, i.e. to complete, add to, or reinforce the state’s efforts.

The President did not order any federal agency to take the lead role, and Governor Blanco requested only federal reinforcements. The letters do not address whether a national emergency explicitly places the federal government in the role. There was no doubt that Hurricane Katrina warranted a Presidential declaration of national emergency. Nor was there any doubt that the evacuation plan would not remove all residents from harm. Marine Scientist and then Deputy Director of the LSU Hurricane Center, Ivor van Heerden, warned FEMA and the Army Corps of Engineers about the inadequacy of the evacuation plan. Heerden felt that the evacuation plan would leave thousands of residents stranded after the storm.²¹ When the President declared a national emergency for areas of Louisiana, many felt that the Stafford Act of 2000 gave the federal government the legal responsibility to lead disaster relief operations.²² The Stafford Act was intended to provide “predisaster mitigation, to streamline the administration of disaster relief, [and] to control the Federal costs of disaster assistance...”²³ The Act does not assign the lead role to the federal government in disaster relief operations after a Presidential declaration of a national emergency. In fact, the Act makes no mention of

¹⁹ Federal Emergency Management Agency, "Emergency Aid Authorized for Hurricane Katrina Emergency Response in Louisiana," Department of Homeland Security, <http://www.fema.gov/news/newsrelease.fema?id=18447>, (Accessed 2 May 2011).

²⁰ Governor Kathleen Babineaux Blanco, "27 August 2005 Letter--Governor Blanco Asks President to Declare an Emergency for the State of Louisiana Due to Hurricane Katrina " Louisiana Governor's Office, http://jjic.gov.state.la.us/Press_Release_detail.asp?id=976, (Accessed 19 Mar 2011).

²¹ Heerden, *The Storm: What Went Wrong and Why*, 64.

²² ———, *The Storm: What Went Wrong and Why*, 64.

²³ United States Congress, "Public Law 106-390: Disaster Mitigation Act of 2000," ed. U.S. Congress (106th Congress, 2000), 2.

national-emergency declarations. This law was not intended to increase the role of the federal government in an actual disaster but to motivate states to create better mitigation plans through legislated requirements, periodic reviews, and allocation of federal funds.

Congress has, however, passed laws giving the President the authority to intervene in an insurrection without the request or permission of states.²⁴ These Presidential powers are based on a state's inability to protect the constitutional rights of American citizens, what lawyers call non-derogable rights. The President does not have the explicit constitutional powers to usurp states responsibilities unless it involves war or domestic violence. Nonetheless, many Presidents believe the federal government has the responsibility to protect U.S. citizens to the fullest extent possible and the Supreme Court has upheld the Presidents right to do so. This is an implied Presidential authority based on a state's inability to protect constitutional rights. If a state cannot provide this protection, the President may step in and do so. While courts have upheld the power of the President to ensure non-derogable rights, court rulings have been specific to a case, resolving each challenge based on the facts of that case.²⁵ There is no landmark ruling allowing the President to intervene without fear of violating the law. Thus, Presidents must weigh heavily the cost associated with intervention.

The questionable area has to do with timing and severity of the threat. When should the President intervene in state affairs? The Judicial and Legislative branches of government have given him the nod to intervene but have not clarified when. He has the power to send in federal troops if the situation dictates. After the President declares a state of emergency, he can suspend the right of Habeas Corpus.²⁶ There is some question as to whether the President can do this solely or whether it is necessary to seek the approval of Congress? Given the ambiguous nature of the President's powers to intervene

²⁴ 10 USC Sec. 333 provides conditions for Presidential use of the military to quell an insurrection stating, "any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; ———, *Enforcement of the Laws to Restore Public Order: 10 USC Chapter 15* (Washington D.C.: U.S. Congress, 2010).

²⁵ Harold J. Krent, *Presidential Powers* (New York: New York University Press, 2005), 150-151.

²⁶ Article 1, Section 9 of the U.S. Constitution states, "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it"; National Archives, "United States Constitution," The National Archives and Records Administration, http://www.archives.gov/exhibits/charters/constitution_transcript.html, (Accessed 20 Mar 2011).

in state affairs and limited constitutional authority in this area, a power struggle over this issue would probably require a Supreme Court ruling.

The preeminent constitutional law scholar Edward S. Corwin, defines emergency conditions as those conditions “which have *not* attained enough of stability or recurrency to admit of their being dealt with according to rule [emphasis added].”²⁷ Inherent in this definition is that laws are created to deal with things that are known and foreseeable. Emergency powers, on the other hand are necessary to deal with the unforeseen. These powers are ever-present and not created, altered, or diminished by any particular event. The U.S. Supreme Court decision in 1934 (*Home Building & Loan Association v. Blaisdell et al.*), concluded that “While emergency does not create power, or increase granted power, or remove or diminish the restrictions imposed upon power granted or reserved, emergency may furnish the occasion for the exercise of power.”²⁸ For Congress, Article 1, Section 8 explicitly provides emergency powers by stating that Congress has the responsibility to “provide for the common Defense and general Welfare of the United States,” and “To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”²⁹ Concerned with the President’s emergency powers, Congress attempted to control them with the passage of the National Emergencies Act. This Act states that the President must transmit to Congress the specific Executive Powers provided by law that are required to deal with the emergency.³⁰ While the Act does not require the President to seek approval prior to using powers provided by law, notification of Congress guarantees a public debate over any action the Congress finds disagreeable. Between the laws enacted by Congress and the U.S. Constitution, both Congress and the President have the power to initiate relief operations at any time, but the process is not fluid.

²⁷ Edward Samuel Corwin, *The President, Office and Powers, 1787-1957; History and Analysis of Practice and Opinion*, 4th rev. ed. (New York,: New York University Press, 1957), 3.

²⁸ Lawyer's Edition U.S. Supreme Court Cases, "*Home Building & Association V. Blaisdell Et Al.*, No. 370, Supreme Court of the United States, 290 U.S. 398; 54 S. Ct. 231; 78 L. Ed. 413; 1934 U.S. Lexis 958; 88 A.L.R. 1481 (November 8, 9, 1933, Argued), (January 8, 1934, Decided)," United States Supreme Court, <http://www.lexisnexis.com/hottopics/lnacademic/>? (Accessed 21 Mar 2011). 4.

²⁹ National Archives, "U.S. Constitution."

³⁰ United States Congress, "National Emergencies (50 USC, Chapter 34, Sec. 1631)," GPO, <http://uscode.house.gov/download/pls/50C34.txt>. (Accessed 21 Mar 2011).

While the President can act when it is clear that a state is unable to manage a crisis, acting poses considerable risk to his presidency if intervention is viewed by Congress or the state as an abuse of power. When viewed from this perspective, evacuations have latitude in how they are executed. Evacuations usually do not result in 100% removal of residents, so the poor evacuation plan for New Orleans did not trigger concern. Herein lies the discrepancy between the criteria and the legal latitude Presidents have. The most liberal interpretation of the law allows Presidents to intervene in domestic affairs when states are unable to guarantee the inalienability of human rights—rights where no derogation is possible. While this occurred during the evacuation phase, it was not provable until after Hurricane Katrina made landfall in Louisiana, but this is also the point where the public expects a federal response. The point where it is publicly clear that a state is unable to manage a crisis is also the point where the American people expect the federal government to intervene. When potential victims become aware that the state is unable to provide disaster relief, they immediately redirect their cries for help to the federal government. For the federal government, the only way to avoid negative publicity is to prepare in advance for a state's failure to properly manage a crisis. Given the devastation of Hurricane Katrina, no one would have taken issue if the President had taken over disaster preparations and evacuated New Orleans, but this is a perspective made clear only with hindsight. To avoid negative publicity, the President must understand the details of disaster preparation, not only monitoring the officials at the state and local levels but also the federal level. The Presidents must know when federal intervention is necessary and when a change to the federal response force is required.

The initial federal response for Hurricane Katrina was disjointed and mismanaged. According to a Brookings Institute timeline of Hurricane Katrina, FEMA Director Michael Brown dispatched 1000 employees to the region on 29 August, five hours after Katrina made landfall and gave them two days to arrive.³¹ Homeland Security spokesman Russ Knocke said that the 1000 employees needed the two days to receive training in how to support first-responders.³² These employees should have been trained

³¹ Elana DeLozier, and Kamp, Nina, "Hurricane Katrina Timeline," The Brookings Institution, <http://www.brookings.edu/fp/projects/homeland/katrinatimeline.pdf>. (Accessed 3 May 2011), 2.

³² Associated Press, "FEMA Director Waited to Seek Homeland Help. Documents: Brown Waited Five Hours after Storm's Landfall to Get Agency Aid," MSNBC,

to support first-responders prior to a catastrophic event. Moreover, the Department of Homeland Security waited until 1 September to request help from the airlines to evacuate storm victims. Brown did not have the experience to manage a crisis like Hurricane Katrina, but unlike Hurricane Andrew, the President did not task DOD as the lead agency in the relief effort. Once a disaster strikes, one of the most important qualities leaders need is the ability to properly manage resources. Disastrous events such as Katrina are complex in their impact on emergency-response plans, introducing challenges that require initiative and innovation. Michael Brown made bad decisions that compounded problems and delayed relief operations.

Managing Limited Resources

Once federal relief operations began, there was tremendous pressure to provide victims the resources they needed. The government was unprepared to provide these resources in an efficient manner. After giving 1000 Homeland Security employees two days to reach the region, Brown requested an additional 2000 employees to support the relief effort and gave them seven days to report.³³ Brown's poor decisions continued on 1 September, when his subordinates reported a shortage of ice and water in Mississippi. They needed 450 trucks of ice but were to receive only 60 trucks the next day. These supplies were thought to be vital in reducing tensions caused by inadequate supplies. "Robert Fenton, a FEMA regional response official, predicted "serious riots" if insufficient supplies did not arrive."³⁴ Brown received these concerns via email but chose not to respond. These are only a few examples. Congress, conducting an investigation on the federal response to Hurricane Katrina, confiscated his emails and found numerous other instances of Brown's mismanagement. However, the causes of the federal government's poor response began before Hurricane Katrina with the hiring of Brown as FEMA Director.

http://www.msnbc.msn.com/id/9233396/ns/us_news-katrina_the_long_road_back/, (Accessed 3 May 2011).

³³ Associated Press, "FEMA Director Waited to Seek Homeland Help."

³⁴ Joe Allbauch, "'Can I Quit Now?' FEMA Chief Wrote as Katrina Raged," CNN, http://articles.cnn.com/2005-11-03/us/brown.fema.emails_1_international-arabian-horse-association-marty-bahamonde-e-mails?_s=PM:US, (Accessed 3 May 2011), 3.

The media, the American people, and Congress have routinely criticized Michael Brown's leadership failures during Hurricane Katrina. They point to his lack of experience dealing with emergency management prior to his selection as FEMA Director. Brown's total emergency management experience was five years as the assistant city manager of Edmond, Oklahoma, with oversight of emergency services. All criticisms of Brown's leadership abilities are warranted but the question is: how did he become the Director of FEMA?³⁵ Brown was a political appointee and like all appointees, his appointment came from the President with approval from the U.S. Senate.³⁶ His selection as Director of FEMA came with little fanfare from the media and the public, as everyone understood the political-appointee-selection process to be relationship based.

It is impossible to determine how much blame Michael Brown deserves for FEMA's failures during Hurricane Katrina but it is probably fair to say he should not have been the Director of FEMA. The management of resources is essential to the proper execution of any disaster relief effort, but the person in charge must have the skills to manage the resources of a large bureaucratic organization like FEMA. Brown did not have these skills, but very few people do. The Constitution allows the Senate to provide advice and consent to any appointee the President nominates. In this case, the process failed. To reduce the possibilities of this occurring in the future, the President should nominate individuals who have experience managing large organizations. While the United States has many large organizations within its borders, few have the complexity, legal constraints, and congressional oversight as DOD. Senior leaders in this organization have experiences directly applicable to disaster relief operations.

DOD is best known as the organization responsible for defending the nation against external threats. However, in addition to its primary mission of warfighting, DOD plays an important role in civil support. The U.S. Military has provided support to civil authorities in response to domestic disorders and natural disasters since the era of

³⁵ There is some disagreement whether Brown had any emergency oversight. According to a TIMES article, Brown was actually an assistant to the city manager and had no emergency or personnel oversight. Daren Fonda, and Healy, Rita, "How Reliable Is Brown's Resume?," TIME (CNN), <http://www.time.com/time/nation/article/0,8599,1103003,00.html>. (Accessed 4 May 2011).

³⁶ The Constitution of the United States, Article 2, Section 2, 2nd paragraph; Founding Fathers, *The Constitution of the United States and the Declaration of Independence*, 24th (reprint) ed. (Washington D.C.: Joint Committee on Printing, 2009), 11.

President George Washington. Today, as a matter of policy, civil defense and disaster-related emergencies are referred to as Military Support to Civil Authorities (MSCA). Military support to civil authorities is defined as “DOD support, including Federal military forces, the Department’s career civilian and contractor personnel, and DOD agency and component assets, for domestic emergencies and for designated law enforcement and other activities.”³⁷ The President and the secretary of defense are the only ones authorized to direct MSCA activities.³⁸ The office of the Joint Chiefs of Staff of the Joint Director of Military Support “produces military orders as they pertain to domestic emergencies, forwards them to SecDef for approval and then to the appropriate military commander for execution.”³⁹ Nevertheless, the President and the Senate must find a better way to barter and attain their personal and party goals. Catastrophic events require people in charge with emergency management experience, who can also manage resources.

Altering Laws

There were many failures associated with the events of Hurricane Katrina, but none more irrefutable than the levees. A review of the preparations that occurred prior to Hurricane Katrina making landfall in Louisiana highlights that local and state officials were executing a plan that did not accurately depict the problem at hand. Any coastal city facing a Category 3 hurricane has to consider evacuation, prepositioning of food and water, the safeguard of aviation assets, etc. However, New Orleans is in a known flood zone and this presented a problem that demanded *a priori* consideration. Specifically, the vulnerabilities of the levee system needed attention and should have resulted in an early, authoritative declaration by local and state leaders for citizens to evacuate. The knowledge that the levees were unreliable and could result in massive flooding was available prior to Hurricane Katrina. According to an independent group assembled by the Army Corp of Engineers, the levees throughout Southeast Louisiana were poorly

³⁷ U.S. Department of Defense, "Strategy for Homeland Defense and Civil Support," <http://www.defenselink.mil/news/Jun2005/d20050630homeland.pdf>, (Accessed 3 May 2011).

³⁸ U.S. Department of Defense, "Strategy for Homeland Defense

³⁹ Joint Chiefs of Staff, "Joint Publication 3-26: Homeland Security," ed. Department of Defense (Office of the Chairman of the Joint Chiefs of Staff, 2005), IV-10.

constructed and were inferior to what was required by the original design specifications.⁴⁰ In July 2005, U.S. News & World Report quoted Ivor van Heerden, director of Louisiana State University's Center for the Study of Public Health Impacts of Hurricanes, as saying, "If a hurricane comes next month, New Orleans could no longer exist."⁴¹ The reporter goes on to conclude that "Even a Betsy-like Level 3 storm, which had winds of up to 130 mph, is now more likely to trigger storm surges in the Mississippi River or Lake Pontchartrain that could spill over levee walls."⁴² The inadequacy of the levees and the knowledge of this prior to Katrina, compel the federal government to consider altering laws to prevent another Katrina-like disaster.

On 8 November 2007, President Bush signed the Water Resources Development Act (WRDA), Public Law No: 110-114. In Sec. 7012 of WRDA, Congress authorized the improvement of levees in New Orleans to meet the 100-year flood protection requirement as stipulated by the national flood insurance program, modify drainage canals, install pumps, install closure structures, and reinforce or replace flood walls.⁴³ The 100-year national flood insurance program requirement identifies areas within the United States that FEMA has determined to be a Special Flood Hazard Area (SFHA). SFHAs have a 1% probability each year, for the next 100 years of inundation by flood.⁴⁴ This is different from saying that a flood will occur once every 100 years. This Act was last renewed in Congress in 1996, and President Bush vetoed the bill when it came across his desk in 2007, a veto that was overridden by Congress. President Bush vetoed four previous bills but this was his first experience with Congress overriding his veto. The President felt that the bill lacked fiscal responsibility and did not set priorities.⁴⁵ In

⁴⁰ U.S. Army Corps of Engineers, "Performance Evaluation of the New Orleans and Southeast Louisiana Hurricane Protection System, Final Report of the Interagency Performance Evaluation Task Force, Volume V -- the Performance -- Levees and Floodwalls," U.S. Army Corps of Engineers, <https://ipet.wes.army.mil/>, (Accessed 19 Mar 2011), 123-124.

⁴¹ Dan Gilgoff, "Big Blow in the Big Easy," U.S. News & World Report, <http://www.usnews.com/usnews/news/articles/050718/18neworleans.htm>, (Accessed 19 Mar 2011), 1.

⁴² Gilgoff, "Big Blow in the Big Easy." 1

⁴³ 110th Congress, "Public Law 110-114," Government Printing Office, <http://www.gpo.gov/fdsys/pkg/PLAW-110publ114/html/PLAW-110publ114.htm>, (Accessed 19 Mar 2011).

⁴⁴ National Flood Insurance Program, "Talking Points--Flood Maps," FEMA, <http://www.floodsmart.gov/toolkits/flood/downloads/TPsFloodMaps-OT2007.pdf>, (Accessed 19 Mar 2011), 1.

⁴⁵ To see President's entire response regarding WRDA, go to; President George W. Bush, "President Bush Vetoes Water Resources Development Act of 2007," The White House, <http://georgewbush-whitehouse.archives.gov/news/releases/2007/11/20071102-3.html>, (Accessed 19 Mar 2011).

fairness, President Bush did not veto a bill intended to repair the levees in New Orleans. Money for the levees was added to the bill as an attachment and was not the primary intent of the bill. Many members of Congress added measures to improve their districts, which included measures to provide disaster relief to Hurricane Katrina victims. Due to this packaging, the bill was always expected to pass, and the veto did not alter this prospect.⁴⁶ In the end, the veto override was not close, with the House voting 361 to 54 and the Senate 79 to 14.⁴⁷

As discussed in Chapter 1, laws do not form haphazardly but are the product of norms, the market, architecture, and experiences. That is, time is required for norms, market and architecture to produce laws. Laws are created or adapted because they are not sufficient for a new environment or they are altered in response to changing norms. The environment is constantly changing due to norms, market and architectural forces. Federal laws are frequently altered in response to market forces regulating in a manner that puts the United States' economic interest at risk. Architecture can alter laws through the discoveries of science. Many discoveries change the way we view our lives. For example, the invention of the airplane altered our view of time and gravity. Most importantly, a law's sufficiency is determined by the masses not an individual. The masses must convince the elites that a law is insufficient for the new environment, regardless of whether the environment changed because of the market, architecture, or norms.

In general, laws are an expression of norms but are also created and altered to make things right after they have gone wrong, to return to the status quo. WRDA actually resulted in the rebuilding of the levees in New Orleans, an attempt at reestablishing trust in the federal government. The levees are stronger now than they have ever been even though some experts argue that the protection the levees will provide is not enough. After Hurricane Katrina people lost faith in the federal government and WRDA was meant to restore this faith. Unfortunately, the federal government can pass

⁴⁶ David Stout, "In First Bush Veto Override, Senate Enacts Water Bill," The New York Times, http://www.nytimes.com/2007/11/08/washington/08cnd-spend.html?_r=2&oref=slogin, (Accessed 19 Mar 2011).

⁴⁷ H.R. 1495--110th Congress, "Water Resources Development Act of 2007," GovTrack.us (database of federal legislation), <http://www.govtrack.us/congress/bill.xpd?bill=h110-1495>, (Accessed 19 Mar 2011).

laws to restore the status quo but it takes time for people to regain trust. When asked, “do you trust [the levees]”, a Jefferson Parish resident stated, “No. How can I trust somebody who makes that big of an error?”⁴⁸ Interestingly, the question pertained to the levee, but her response seems to refer to the President, the one individual “embodying the authority of the nation,” ultimately responsible for ensuring the safety of the American people.⁴⁹

Federal Troops

All service components of the Department of Defense responded after Hurricane Katrina hit the coast of Louisiana on 29 August. However, for the first five days thereafter, the preponderance of the active-duty force consisted of Navy, Air Force, and Marines. The Army Corps of Engineers began contracting work immediately after Katrina made landfall, providing water, emergency power, MREs and debris removal.⁵⁰ The Iwo Jima Amphibious Readiness Group loaded and sailed to the region. U.S. Transportation Command flew in water rescue teams and the *USS Bataan* sailed to Louisiana providing search-and-rescue support operations and helicopter medical evacuation.⁵¹ Further, the Army and Marine Corps had ground personnel in a ready status to provide federal assistance to local and state authorities when requested.⁵² With such a response after the storm struck, why did DOD not deploy these forces prior to Katrina making landfall to support police and evacuation efforts? In short, they were not asked. For local and state officials, recognizing the levees may not hold and that all residents would not evacuate, was not enough to call in direct federal support. In letters from Governor Blanco to the President from 27 and 28 August 2005, there was no request for military support. The letter dated 27 August listed things that the state of Louisiana was doing in preparation for Hurricane Katrina, but did not mention plans for

⁴⁸ John Schwartz, "New Orleans Levees Nearly Ready, but Mistrusted," New York Times, <http://www.nytimes.com/2010/08/24/us/24levee.html>, (Accessed 19 Mar 2011), 1.

⁴⁹ Samuel P. Huntington, *The Soldier and the State; the Theory and Politics of Civil-Military Relations* (Cambridge, MA: Belknap Press of Harvard University Press, 1957), 35.

⁵⁰ U.S. House of Representatives, "Final Report of Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina: A Failure of Initiative," (Washington D.C.: Government Publishing Office, 2006), 217.

⁵¹ Department of Homeland Security, "Press Release--United States Government Response to the Aftermath of Hurricane Katrina," Department of Homeland Security, http://www.dhs.gov/xnews/releases/press_release_0721.shtm, (Accessed 19 Mar 2011).

⁵² Lynn E. Davis, *Hurricane Katrina : Lessons for Army Planning and Operations* (Santa Monica, CA: RAND, 2007), 30.

residents who could not evacuate.⁵³ In the 28 August letter, Governor Blanco seems to have recognized the severity of the storm as she delineated parishes that were expected to have major damages from parishes expected only to have significant damages.⁵⁴ It is improbable that state and local leaders of Louisiana chose not to use federal troops because they did not know how devastating Hurricane Katrina would be, but the alternatives were limited to calling for federal assistance to provide the maximum preparation or “hedging their bets” in the hopes that internal state efforts would suffice. It seems they made a conscious choice to hedge their bets.

This case is similar to Hurricane Andrew in that there seems to be a fear associated with the presence of federal troops. This is not to suggest that victims were afraid of the presence of federal troops. Assuming people have a preference, they tend to become less discriminatory with who provides help as their situation deteriorates. For disaster relief, if *fear of failure* is the underlying cause of psychological commitment, then failure is easily linked with federal troops as the object that triggers fear. Federal troops are the only variable easily manipulated by local and state officials. The presence of federal troops usually requires a request from the state governor, a controllable action. The movement of federal troops for disaster relief communicates publicly that events have exceeded the state’s ability to manage the crisis. Because there are no objectives that define success in relief operations, the default option is to control indications of failure, and the easiest way to limit expressions of failure for the state is to prevent federal troop support.

For the federal government, disaster intervention is not defined clearly for the President, and Congress must vote to initiate relief operations. This does not make intervention impossible for the federal government but it increases the risk of doing so. As discussed with states, Elite Theory of Policy Analysis can help explain why the federal government delays response to disasters. Elites must agree on the proper course of action for the federal government prior to any response. This is illustrated in a

⁵³ Blanco, "Governor Blanco Asks President to Declare a State of Emergency."

⁵⁴ Governor Kathleen Babineaux Blanco, "28 August 2005 Letter--Governor Blanco Asks President to Declare an Emergency for the State of Louisiana Due to Hurricane Katrina
" Louisiana Governor's Office, <http://jjic.gov.state.la.us/Disaster%20Relief%20Request.pdf>, (Accessed 19 Mar 2011).

statement by Senator Rand Paul that “While the President is the commander of our armed forces, he is not a king.”⁵⁵ This is a strict interpretation of the Constitution, which ignores the unilateral actions of previous Presidents but highlights the fact that the elites in Washington expect an agreement prior to action. However, an agreement on intervention is difficult in a system where federal laws require a state to request federal troop support. It is fairly easy to agree on all forms of disaster relief besides federal troop support. It is difficult for the President or Congress, even with the most robust resources, to intervene without visible signs that a state lacks the capability to manage the crisis.

On 9 September, Vice Admiral Thad Allen, Chief of Staff of the United States Coast Guard, replaced Brown as the point man for Katrina recovery operations.⁵⁶ Brown resigned on 12 September, amidst rumors that he padded his resume’ to increase the position and responsibility of his emergency management experience and “for what critics [called] a bungled response to Hurricane Katrina's destruction.”⁵⁷ President Bush seemed unaware of the resignation when asked about it on 12 September telling reporters, “He had not talked with Chertoff and could not comment.”⁵⁸ It is impossible to determine if the President privately asked for Brown’s resignation and decided that it would be better if Brown publicly provide his resignation to the Secretary of Homeland Security. In any case, prior to Brown’s resignation, the President faced some harsh criticism for FEMA’s handling of the relief effort. Brown’s resignation did not improve the President’s image with this disaster because he seemed to have nothing to do with the resignation.

Conclusion

Hurricane Katrina illustrates that local and state leaders have a responsibility to prepare for disasters and request support when their capabilities are overcome by events.

⁵⁵ Rand Paul, "Time to Consult Congress, Follow Constitution before Action," Rand Paul, <http://www.randpaul2010.com/2011/03/senator-rand-pauls-response-to-president-obamas-libya-address/>, (Accessed 5 May 2011).

⁵⁶ CNN Politics, "Admiral Takes over Katrina Relief," CNN, http://articles.cnn.com/2005-09-09/politics/katrina.washington_1_fema-federal-emergency-management-agency-security-secretary-michael-chertoff?_s=PM:POLITICS, (Accessed 5 May 2011).

⁵⁷ ———, "FEMA Director Brown Resigns," CNN, http://articles.cnn.com/2005-09-12/politics/brown.resigns_1_fema-official-david-paulison-chertoff?_s=PM:POLITICS, (Accessed 5 May 2011).

⁵⁸ Politics, "FEMA Director Brown Resigns."

Local and state leaders did not adhere to these guidelines. Evacuations were less than optimum and no request was made to the President for federal troop support. When the Mayor of New Orleans finally ordered a mandatory evacuation, he decided to use school buses to transport the citizens to an evacuation shelter. Unfortunately, the pick-up locations were poorly marked and the buses only ran for a few hours, leaving all who remained to ride out the storm at their residence or the Superdome. The emergency plan implemented by the state of Louisiana took care of the obvious, i.e. evacuate those who want to leave, but was ill prepared to protect the people who did not leave.⁵⁹ Local and state officials lacked the situational awareness to assess the severity of the problem and make proper decisions. Governor Blanco stated a few days after Hurricane Katrina made landfall, "I can't say that I feel that sense that we've escaped the worst. I think we don't know what the worst is right now."⁶⁰ The levees broke, as anticipated by many, and over 30,000 people were stranded in the Superdome in unsanitary conditions with little water or food.⁶¹ Local and state leaders were psychologically committed to actions that did not produce positive results and seemed to fear the presence of federal troops because their presence signifies a state's failure and could lead to a possible loss in power, wealth and prestige. This concern for power is illustrated by Mayor Nagin who repeatedly told Admiral Allen that he "was trying to be the federal mayor of New Orleans, which couldn't have been further from the truth. [The Admiral] was trying to use the resources of the federal government to empower [the major's] response to the disaster."⁶²

According to the Assistant Secretary of Defense for Homeland Defense, "The Department of Defense's response to the catastrophic effects of Hurricane Katrina was the largest military deployment within the United States since the Civil War," but the response was not timely.⁶³ FEMA Director Michael Brown seemed unable to lead the

⁵⁹ Miskel, *Disaster Response and Homeland Security : What Works, What Doesn't*, 94.

⁶⁰ Joel Roberts, "At Least 55 Dead in Mississippi," CBS News, http://www.cbsnews.com/stories/2005/08/30/national/main802478.shtml?source=search_story, (Accessed 19 Mar 2011), 2.

⁶¹ Miskel, *Disaster Response and Homeland Security : What Works, What Doesn't*, 95.

⁶² James Kitfield, "Haiti Response Effort Brings Lessons from Katrina," National Journal, <http://www.govexec.com/dailyfed/0210/020910nj1.htm>, (Accessed 5 May 2011).

⁶³ Assistant Secretary of Homeland Defense Paul McHale, "Hearing on Hurricane Katrina: Preparedness and Response by the Department of Defense, the Coast Guard, and the National Guard of Louisiana, Mississippi, and Alabama before Select Comm., 109th Cong. (Oct. 27, 2005) (Written Statement),"

organization through a catastrophic event. All FEMA Directors are political appointees who are usually selected based on their relationship to the President. Qualifications for the job seem to run secondary to fulfilling a previously established political commitment.

Regarding Federal troops, the President and Congress have the power to intervene in disasters but this interventions comes with a risk to their political careers. The use of federal troops for disaster is best encapsulated by a statement from the Select Bipartisan Committee investigation Hurricane Katrina that, “The Department of Defense (DOD) serving as part of the federal response team, takes its directions from state and local leaders. *Since that is our nation’s tradition*, DOD does not plan to be the lead agency in any disaster situation and expects to assist as local authorities request and direct” (emphasis added).⁶⁴ Because DOD does not plan to be the lead agency in any disaster situation, it takes time to generate the necessary response to manage the crisis. This is not the fault of DOD. The Secretary of Homeland Security can make the request to the President to stage military forces for relief operations but requesting federal troops is the responsibility of the states by law. DOD has no mechanism recognized by law to make this request unless a disaster results in uncontrolled domestic violence or wanton destruction of federal property. DOD’s “behavior in relation to society is guided by an awareness that [their] skill can only be utilized for purposes approved by society through its political agent, the state.”⁶⁵ In the end, Hurricane Katrina illustrates that if states fail to request the support of federal troops during a catastrophic event; DOD’s response is delayed resulting in increased suffering for the victims of the disaster. It further suggests that the prospect of using federal troops in a future disaster will be equally problematic.

Department of Defense, <http://www.dod.gov/dodgc/olc/docs/testMcHale051109.doc>, (Accessed 21 Mar 2011), 9.

⁶⁴ Representatives, "Final Report of Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina," 201.

⁶⁵ Huntington, *The Soldier and the State; the Theory and Politics of Civil-Military Relations*, 15-16.

Conclusion and Implications

Thus, the ultimate source of strategy lies in the values of the people of a nation. In a free society a strategy that is contrary to the sense of values of the people cannot be expected to succeed.

Henry E. Eccles

What have we learned? First, disaster relief is a reflection of history. American culture shapes the ways in which state and federal agencies inter-operate. Secondly, civilian leaders, even when they lack the requisite knowledge to direct military action, are rightfully in charge.¹ For DOD's role, this suggests that civilian leaders have the right to be wrong even if it results in a loss of life. Thirdly, state leaders have a vested interest in preventing DOD from providing relief. The President or Congress can provide federal troop support without the approval of a state, but this action will usually meet resistance from the state. As with most people, local and state leaders fear the consequences of failure and attempt to suppress or mask failure. This does not mean that local and state officials care more about their careers than the lives of American citizens, but fear prevents them from making decisions that will adversely affect their power, control, and prestige.

Congress is the only federal entity which clearly has the power to provide federal troop support without a state's request, but even this is subject to judicial review. Over time, Congress and the Supreme Court have allowed Presidents to intervene in state matters even though this authority is not explicitly stated in the Constitution. This acquiescence started with the founding fathers and the U.S. Constitution. The Constitution does not list times when federal intervention is necessary. This detail was left to ambiguity. The Supreme Court and Congress eventually agreed that the federal government has the right to intervene in state affairs when the state is unable to protect the constitutional rights of American citizens, but it is difficult to determine when these constitutional rights are violated.

¹ Peter Feaver, *Armed Servants : Agency, Oversight, and Civil-Military Relations* (Cambridge, Mass.: Harvard University Press, 2003), 9.

Bureaucracies are structured in a manner that allows them to maintain accountability of their members through planning and rehearsals.² Punishment and rewards are based on how well members of the bureaucracy adhere to the standards established by the plans. Bureaucracies are slow to change and very protective of their area of responsibility. Other federal organizations may be able to accomplish the task better than the assigned bureaucracy, but it is unlikely that the leaders of the assigned bureaucracy will make this fact known to any higher authority. The presence of federal troops operating domestically is a sign of the National Guard's failure or inability to manage disaster relief operations. By law, federal troops will not intervene in disaster relief efforts unless states are overwhelmed.³

Bureaucracies have an institutional desire to survive but also an inability to respond to events that are vastly different from the one anticipated for in the planning effort. Moreover, if we assume that the National Guard is as prepared as any single entity can be; it is still probable that it cannot singularly handle all disaster relief efforts. FEMA has calculated that a hurricane, like Hurricane Katrina or Andrew, large enough to cause major floods and destruction, has a 1% chance each year of occurring.⁴ Consequently, the National Guard may be unprepared to respond properly to any national disaster due to its bureaucratic nature but *will* eventually face a storm that is beyond its capability to manage.

Patrick Porter writes, 'Culture is an influential variable...[which] turns attention to the domestic context in which decisions are made...Policy is made at home by decision-makers who are formed by particular memories, biases, and values, and is executed by organizations and individuals with their own baggage.'⁵ American culture evolved by reconciling differing views and opinions such as women's suffrage, slavery

2 Linda K. Stroh, Gregory B. Northcraft, and Margaret Ann Neale, *Organizational Behavior : A Management Challenge*, 3rd ed. (Mahwah, N.J.: Lawrence Erlbaum, 2002), 406-408.

3 "The State...may request the President to...utilize the resources of the Department of Defense for the purpose of performing on public and private lands any emergency work which is made necessary by such incident and which is essential for the preservation of life and property"; United States Congress, "Robert T. Stafford Disaster Relief and Emergency Assistance Act, as Amended, and Related Authorities," GPO, http://www.fema.gov/pdf/about/stafford_act.pdf, (Accessed 5 Apr 2011), 28.

4 National Flood Insurance Program, "Talking Points--Flood Maps," FEMA, <http://www.floodsmart.gov/toolkits/flood/downloads/TPsFloodMaps-OT2007.pdf>, (Accessed 19 Mar 2011), 1.

5 Patrick Porter, *Military Orientalism : Eastern War through Western Eyes* (New York: Columbia University Press, 2009), 56.

and the use of federal troops domestically. All of these events have made their imprint on American culture and helped produce sensitivities and biases that are unexplainable by the holder. These sensitivities and biases are essentially expectations Americans have about the way things are and the way they ought to be. For DOD's MSCA role, an historical analysis was accomplished to determine American expectations using a model created by Lawrence Lessig. The Lessig model was chosen because it provided a theory of how individual behaviors are regulated. Simply stated, the Lessig model suggests that norms, market, architecture and laws regulate behavior, but this interaction is very complex.⁶ Because each regulator influences the actor and may simultaneously be influenced and influence other regulators, the model is not conducive for use as a predictive tool. This was not an issue for this study since we were simply trying to provide meaning to events that had already occurred; applying meaning to the historical evolution of America. After analyzing the historical events stated above, it was concluded that the American expectations for DOD's support role equated to:

- 1) The federal government in DOD has 'excess capacity' that can aid in disaster relief.
- 2) The federal government must respond in support of states dealing with disasters they are incapable of managing. This response is necessary even if states should have and did not properly prepare for the emergency.
- 3) The federal government must manage the limited federal resources to support the needs of the nation and the states.
- 4) The federal government may have to alter laws to meet existing threats.
- 5) Delays in the federal response to domestic emergencies are acceptable if they these delays are caused by a state's effort to manage a crisis.

These expectations are, for our purposes, traits of American culture as it pertains to the federal government's response to disaster-relief efforts and DOD's MSCA role. These criteria were used to analyze two disasters in American history—Hurricane Katrina and Hurricane Andrew. DOD, as the military arm of the nation, is more inclined to intervene domestically if the violence is caused by people, i.e. terrorism, riots etc. As

⁶ Lawrence Lessig, *Code and Other Laws of Cyberspace* (New York: Basic Books, 1999), 85-93.

noted in Chapter Two, this began with President Jefferson's signing of the Insurrection Act in 1807. Hurricane Katrina and Hurricane Andrew were chosen because they are the two most costly disasters in American history. The two case studies illustrate a number of points relevant to DOD's MSCA role. 1.) DOD is not "shirking" its duties in disaster relief efforts. 2.) The federal government has a tendency to wait until asked prior to providing disaster relief support. 3.) Local and state officials failed to request DOD support before, and during catastrophic events. 4.) FEMA is an enabler, designed to improve communications and coordination between state, local and federal agencies, with contracting as its only capability to directly support disaster relief efforts. 5.) DOD has the preponderance of resources available during a national disaster and should be utilized in a more expedient manner.

Implications

The thesis concludes that improvements in disaster relief policies had stagnated because of an American ideology that supports a self-help system, and an assumption that catastrophic events occur so infrequently that there is no possibility of a public backlash. If this is true; local, state, and federal officials have no need to make drastic changes to these policies, because these policies will slowly but eventually evolve to meet the changing norms of society. However, what if this is not the case? What if the number of catastrophic events increases each year?

An increasing number of scientists agree that the climate is changing, leading to an increase in natural disasters. Maarten K. van Aalst believes that natural disasters are increasing and becoming more destructive.⁷ Webster et al., completed an analysis which suggests that "global data indicate a 30-year trend toward more frequent and intense hurricanes."⁸ This would certainly run up demand for reforms in disaster relief. However, it is difficult, if not impossible, to determine the threshold that causes the American public to demand changes in disaster relief policies. Nonetheless, to better prepare for the increasing number of catastrophic events, the federal government needs a better strategy. There are at least three things the federal government can do to limit the

⁷Discusses how climate change is effecting floods, Tropical Cyclones, heat waves, El Nino; Maarten K. van Aalst, "The Impacts of Climate Change on the Risk of Natural Disasters," *Disasters* 30, no. 1 (2006).

⁸ Peter J. Webster, Holland, Greg J. Curry, Judith A., and Chang, Hai-Ru, "Changes in Tropical Cyclone Number, Duration, and Intensity in a Warming Environment," *Science* 309, no. 5742 (2005), 1846.

negative impacts of catastrophic events. (1) Increase disaster preparedness (2) Establish a Joint Task Force (JTF) under the command of FEMA and (3) Establish the declaration of a national emergency as the trigger for federal troop support.

The federal government must first define what it means by increased disaster preparedness. The Disaster Mitigation Act of 2000 amended the Stafford Act of 1998 and was intended to provide “predisaster mitigation, to streamline the administration of disaster relief, [and] to control the Federal costs of disaster assistance...”⁹ While this act has improved states’ preparedness for natural disasters, states are still woefully unprepared to deal with catastrophic events. Hurricane Katrina illustrates that a natural disaster can become a catastrophic event simply because of poor planning. The levee system had limitations that were known prior to Katrina making landfall. The President and Congress must take active steps to replace and repair infrastructure that is unable to provide the necessary protection. However, before doing this, it is necessary to define the level of protection that the government is going to fund and have evacuation plans built around this level of protection. For example, the federal government can define increased disaster preparedness as the ability of a state to withstand a Category 4 hurricane, the ability to evacuate all citizens for a period of six months for storms exceeding Category 4, while rebuilding the area lost to the storm. Where would evacuees go? How would they be housed? Who is in charge of rebuilding the city and so forth? These are questions the federal government must begin to think about in the high-risk coastal areas.

FEMA is an enabler, designed to improve communications and coordination between state, local, and federal agencies. If FEMA is to remain the lead in disaster relief efforts, it needs more than money to throw at the problem. FEMA needs the ability to intervene in state affairs before the level of human suffering makes intervention permissible. This is unlikely to happen in an environment where states must request federal troop support or the federal government must intervene prior to a state’s request. FEMA should have a Joint Task Force directly assigned to it, with the FEMA Director as the commander. It is not important whether the Director of FEMA is a military

⁹ United States Congress, "Public Law 106-390: Disaster Mitigation Act of 2000," ed. U.S. Congress (106th Congress, 2000), 2.

commander or civilian, because the forces are there to provide the necessary manpower to execute FEMA's responsibilities. The Posse Comitatus Act prevents the use of federal troops as a police force, but does not prevent its use in disaster relief operations. If the JTF manages things like contra flow operations, transportation of evacuees, preparation of airfields and aviation assets, the National Guard and local police force would have more people to manage security operations. Arms are not necessary for the JTF in these operations, and the JTF personnel could wear FEMA type uniforms to distinguish them from the police, National Guard, and other DOD personnel. These members would still work for DOD, but would not be bound by Title 10 constraints. This is not a novel approach. DOD personnel working in the National Security Agency work under Title 50, not Title 10. The armed services would retain the responsibility to train and equip these personnel. The objective here is to provide the Director of FEMA with a manpower pool, skilled in disaster relief operations.

Finally, a declaration of a national emergency should automatically trigger an approval for the use of federal troops. As shown in the chapter on Katrina, some authors believe that a national emergency automatically sanctions federal troop support and blame President Bush for not utilizing the resource. While these authors are wrong in their understanding of the law, they are correct in suggesting that a national emergency should remove the limitations that the President has with state affairs. If a governor believes things are so bad that a declaration of national emergency is required, why should she have the right to define the federal support provided? Local and state leaders seem to prefer an arrangement with the federal government that allows them to maintain power and control, while also having a federal response that is quick enough to eliminate or minimize loss of life.¹⁰ States claim constitutional authority for power and control over their territory, and only recognize federal authority when it is convenient to do so. There are inefficiencies that are inherent to a checks-and-balance system such as the United States. These inefficiencies require consideration as states create their disaster relief policy, strategy, and plans. If a declaration of a national emergency means that

¹⁰ Council of State Governors clear says that states are responsible for the protection of it citizens and DOD is only needed in rare instances of catastrophic events; The Council of State Governments Intergovernmental Affairs Committee, "Resolution on the Role of the Military in Disaster Response," Counsel of State Governments, <http://www.csg.org/knowledgecenter/docs/MilitaryResponse.pdf>, (Accessed 29 Mar 2011), 1.

states have given up some power and control the moment that declaration is made, then states would lose the ability to play both sides of the coin. They can no longer refuse to request federal troop support while simultaneously blaming the President for not providing this support, as the governors during Andrew and Katrina both did. This also removes the burden from the President in determining when to send in federal troop support, because under this construct, if states request a declaration of national emergency, they are admitting that events are beyond their ability to manage. To better prepare for the possibility of increased and more destructive catastrophic events in the future, three courses of action are recommended. Two of the three recommendations require Congress to allocate money for their accomplishment. As of this writing, the federal government is in the midst of a struggle to determine what should be done to reduce the budget deficit. Michael Ettinger estimates that it will require a reduction of \$250 billion annually to stabilize the federal budget. This number is large enough to prevent most programs from escaping federal budget cuts.¹¹ This is not a good sign for disaster preparedness. Local, state and federal officials have routinely sacrificed disaster preparedness for other goals. It is not an easy decision to spend money to prevent a catastrophe that will happen at some point in the future. Because catastrophes occur randomly, they are easy to ignore. However, if disasters are becoming more destructive, the decision not to prepare will be more costly in the long run. As a final note, the increased likelihood of DOD's response to disasters implies a higher level of preparation within DOD. The impending budget squeeze notwithstanding, DOD must organize, train, and equip, and plan for disaster relief.

¹¹ Richmond M. Lloyd and Naval War College (U.S.), *Economics and Security : Resourcing National Priorities* (Newport, R.I.: Naval War College), 79.

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